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I N D E X

Witnesses:	Direct	Cross	Re- direct	Re- cross	By Examiner MR.
AUGUST ANKUM Ph.D.	62	67	105	118	101
MR. JAMES D. EHR	125	129 151 167	207		201
MR. WILLIAM DVORAK	212	215			222

1		E X H I B I T S	
	APPLICANT'S	For Identification	In Evidence
2	McLeodUSA		
	3.0 and 3.1		66
3			
	SBC Cross		
4	101, 102 and 103		125
5	AT&T		
	104.0 104.1 104.1C and 105.0		128
6			
	McLeodUSA		
7	No. 1		151
8	Cimco		
	1.0 and 2.0		215
9			
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1           ADMINISTRATIVE LAW JUDGE SAINSOT: By the  
2 authority vested in me by the Illinois Commerce  
3 Commission, I now call Docket No. 01-0120. This is  
4 the petition of Illinois Bell Telephone Company, et  
5 al., for resolution of disputed issues pursuant to  
6 Condition (30) of the SBC/Ameritech Merger Order.

7                   Will the parties identify themselves for  
8 the record, please.

9           MR. MacBRIDE: Appearing on behalf of McLeodUSA  
10 Telecommunications Services, Inc., Owen MacBride and  
11 Elizabeth Blackwood, 6600 Sears Tower, Chicago,  
12 Illinois 60606.

13           MR. ROWLAND: Appearing on behalf of Cimco  
14 Communications, Inc., and Forte Communications, Inc.,  
15 Thomas Rowland of Rowland & Moore, 200 West Superior  
16 Street, Suite 400, Chicago, Illinois 60610.

17           MS. KUHN: Appearing on behalf of MCImetro  
18 Access Transmission Services, LLC, doing business as  
19 Verizon Access Transmission Services, Deborah Kuhn  
20 and the address is Verizon, 205 North Michigan  
21 Avenue, Suite 1100, Chicago, Illinois 60657 -- oh,  
22 sorry, 60601.

1           MS. HERTEL:   Appearing on behalf Illinois Bell  
2   Telephone Company, also now known as AT&T Illinois,  
3   Nancy Hertel, H-e-r-t-e-l, 225 West Randolph, Suite  
4   25-D, Chicago, Illinois 60606.

5           MR. METROPOULOS:   Also appearing on behalf of  
6   Illinois Bell, Jim Metropoulos, Mayer, Brown, Rowe &  
7   Maw, LLP, 71 South Wacker Drive, Chicago, Illinois  
8   60606.

9           MS. NAUGHTON:   Appearing on behalf of staff,  
10   Nora Naughton and Stephanie Glover, 160 North LaSalle  
11   Street, Suite C-800, Chicago, Illinois 60601.

12           ADMINISTRATIVE LAW JUDGE SAINSOT:   Are there  
13   any further appearances?

14                       Okay.   Let the record reflect that there  
15   are no further appearances.

16                       Pursuant to discussions held off the  
17   record, we have agreed that Dr. Ankum will be the  
18   first witness.

19           MR. MacBRIDE:   That's fine.

20                       (Witness sworn.)

21           ADMINISTRATIVE LAW JUDGE SAINSOT:   You can  
22   proceed.

1           MR. MacBRIDE:   Thank you.

2                           AUGUST ANKUM, Ph.D.,  
3   having been called as a witness herein, after having  
4   been first duly sworn, was examined and testified as  
5   follows:

6                           DIRECT EXAMINATION

7                           BY

8                           MR. MacBRIDE:

9           Q    Please state your name and business address  
10   for the record.

11          A    My name is August H. Ankum.   My address is  
12   1027 Arch, Suite 304, Philadelphia, Pennsylvania  
13   19107.

14          Q    And, Dr. Ankum, with what firm are you  
15   affiliated with?

16          A    QSI Consulting.

17          Q    And have you prepared certain testimony you  
18   wish to offer in this proceeding on behalf of  
19   McLeodUSA Telecommunications, Inc.?

20          A    Yes, I do.

21          Q    Do you have before you a copy of the  
22   document that's been marked for identification as

1       McLeodUSA Exhibit 3.0, which is captioned Rebuttal  
2       Testimony of August H. Ankum, Ph.D.?

3           A     Yes.

4           Q     Is Exhibit -- McLeodUSA Exhibit 3.0 the  
5       testimony you prepared for this proceeding?

6           A     Yes.

7           Q     Do you have any corrections or changes to  
8       that exhibit?

9           A     I have one correction. On Page 8, Line  
10      173, the first words on Line 173 is 205. It should  
11      be 204.

12          Q     2004?

13          A     2004, excuse me.

14          Q     With that correction, if I were to ask you  
15      the question shown on McLeodUSA 3.0 at this hearing  
16      today, would you give the same answers that is on  
17      that exhibit?

18          A     Yes, I would.

19          Q     And do you also have an additional exhibit  
20      identified as McLeodUSA 3.1?

21          A     Yes, I do.

22          Q     And is that your resume?



1           A     Yes, it is.

2           MR. MacBRIDE:   Judge, I'd like leave to file a  
3     corrected copy of Mr. Ankum's testimony on  
4     e-docket.

5           ADMINISTRATIVE LAW JUDGE SAINSOT:   Do you have  
6     a corrected copy?

7           MR. MacBRIDE:   No.   We just found out about this  
8     correction.

9           ADMINISTRATIVE LAW JUDGE SAINSOT:   You can --  
10    if you make the correction, assuming it's admitted  
11    into evidence, I can just -- I will file it on  
12    e-docket.

13          MR. MacBRIDE:   Can I -- after the witness is done,  
14    I can just do that on my own copy.

15          ADMINISTRATIVE LAW JUDGE SAINSOT:   Sure.   And  
16    ink is fine.

17          MR. MacBRIDE:   Thank you.

18                         With that, we offer Dr. Ankum's  
19    Exhibits, McLeodUSA Exhibit 3.0 and 3.1 in evidence,  
20    and is available for cross-examination.

21          ADMINISTRATIVE LAW JUDGE SAINSOT:   Any  
22    objection to the admission of these documents?

1           MR. METROPOULOS:  No, your Honor.

2           MR. NAUGHTON:  None.

3           ADMINISTRATIVE LAW JUDGE SAINSOT:  I apologize

4   for not saying this sooner but I -- and this is a

5   very minor thing.  The record might be clearer if you

6   use letters instead of numbers because McLeod

7   probably had a preexisting 3.0.  Or, no --

8           MR. MacBRIDE:  No.  We numbered --

9           ADMINISTRATIVE LAW JUDGE SAINSOT:  You kept on

10  going.

11          MR. MacBRIDE:  In the prior hearings, we numbered

12  them consecutively.

13          ADMINISTRATIVE LAW JUDGE SAINSOT:  Right.  So

14  you're okay.  I think Staff Sam McClerren is 1.0 or

15  something.

16          MS. GLOVER:  And 2.0.

17          ADMINISTRATIVE LAW JUDGE SAINSOT:  Why don't

18  you just call him Exhibits A and B or something.

19          MS. GLOVER:  That's fine.

20          ADMINISTRATIVE LAW JUDGE SAINSOT:  Just in case

21  somebody is looking in the record that they don't

22  have two Exhibits 1.0.

1 MS. NAUGHTON: We can do that.

2 ADMINISTRATIVE LAW JUDGE SAINSOT: And I apologize  
3 for not stating that earlier.

4 Okay. That being the case,  
5 Mr. MacBRIDE, your motion is granted and McLeodUSA  
6 Exhibit 3.0 and Exhibit 3.1 are admitted into  
7 evidence.

8 (Whereupon, McLeodUSA  
9 Exhibit Nos. 3.0 and 3.1  
10 were admitted into evidence.)

11 ADMINISTRATIVE LAW JUDGE SAINSOT: And you'll  
12 be giving me copies after a break?

13 MR. MacBRIDE: Yes, as soon as I can find a clean  
14 copy some place.

15 ADMINISTRATIVE LAW JUDGE SAINSOT: Okay. Any  
16 cross-examination?

17 MR. METROPOULOS: Yes, your Honor. May I  
18 proceed?

19 ADMINISTRATIVE LAW JUDGE SAINSOT: Sure.

20 MR. METROPOULOS: Thank you.

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. METROPOULOS:

4 Q Good morning, Doctor. How are you today?

5 A I'm fine. Thank you.

6 Q Permit me to introduce myself. My name is  
7 Jim Metropoulos. I'm an attorney representing  
8 SBC-Illinois, which is now known as AT&T Illinois.  
9 I'd like to begin by getting an overview of your  
10 rebuttal testimony. So, please turn to Page 2,  
11 Line 36.

12 A I'm there.

13 Q The purpose of your testimony, briefly  
14 speaking, was to respond to AT&T's direct testimony  
15 of Mr. Ehr; is that correct?

16 A Yes.

17 Q And as you understood it, Mr. Ehr addressed  
18 the period October 8th, 2002, to December 30th, 2002;  
19 correct?

20 A Well, he addresses more than just that  
21 period, yes.

22 Q But you understand the period from

1     October 8th through December 30th to be the period  
2     that is most specifically at issue in this  
3     proceeding?

4                     In other words, whether it would be --  
5     the so-called remedy plan would be extended for that  
6     period, that's the issue?

7             A     I believe that's the issue in the  
8     proceeding.  I'm not sure that's necessarily the  
9     issue that is narrowly addressed in Mr. Ehr's  
10    testimony.  I think his testimony goes beyond that.  
11    It creates a general framework for addressing that  
12    question.

13            Q     But you understand the issue -- the primary  
14    issue in this proceeding is focused on that period,  
15    October through December of 2002; correct?

16            A     I believe that's correct, but I haven't  
17    really reviewed the whole procedural history of the  
18    proceeding.

19            Q     That would be sufficient.

20                    Please turn to Page 3 and I'd like to  
21    direct your attention to Line 57 of your rebuttal.

22                    Again, briefly speaking, your testimony

1 describes an analysis you did in the Michigan  
2 proceeding and you are here to report the public  
3 portion of your conclusions in that Michigan  
4 testimony; correct?

5 A Well, I'm here to do more than that, but  
6 you're correct that my testimony in part addresses  
7 the analysis that I did in Michigan and I report on  
8 the public portion of that testimony in my testimony;  
9 but I address other points in Mr. Ehr's testimony.

10 Q Certainly, though, reporting your Michigan  
11 testimony was one purpose of your rebuttal; correct?

12 A Well, the purpose of my rebuttal testimony  
13 is to respond to issues made in Mr. Ehr's testimony.

14 Q Understanding that, and also that -- I'm  
15 just verifying that one of the mechanisms by which  
16 you accomplished that purpose was to report the  
17 conclusions you reached in Michigan; correct?

18 A Yes.

19 Q And it's true that your analysis in  
20 Michigan was limited to Michigan performance results;  
21 correct?

22

1           A     Yes.

2           Q     Conversely, you did not analyze in Michigan  
3     any performance data related to Illinois; correct?

4           A     Not for purposes of the analysis that I'm  
5     reporting on in this rebuttal testimony, that's  
6     correct.

7           Q     And for purposes of this docket, you did  
8     not conduct any additional statistical analysis or  
9     analysis of performance data or results for Illinois;  
10    is that correct?

11          A     That's correct.

12          Q     Please turn to Page 10, Line 206.

13          A     Yes.

14          Q     Your Michigan analysis was limited, as I  
15    understand it, to performance results for the period  
16    September 2003 through September 2005; is that  
17    correct?

18          A     That's correct.

19          Q     Recognizing that our current proceeding  
20    focuses on the period October 2002 through December  
21    2002, you did not look at any performance results for  
22    that 2002 period; correct?

1           A     I did not.

2           Q     Okay.  And for purposes of this docket, you  
3     are not presenting any statistical analysis of 2002  
4     performance results; correct?

5           A     That's correct.

6           Q     Now, I'd like to discuss a little bit more  
7     detail about the analysis you did in Michigan.

8                     You're familiar, generally, aren't you,  
9     Dr. Ankum, with the procedure for the former Bell  
10    companies to enter the long-distance market under  
11    what is called Section 271?

12          A     Yes.

13          Q     And you are aware, aren't you, that in  
14    Illinois in late 2002, AT&T was planning to apply to  
15    the FCC for Section 271 approval; is that correct?

16          A     That's my understanding.

17          Q     And you were aware that in late 2002, the  
18    Illinois Commission here was conducting an  
19    investigation into AT&T's compliance with Section  
20    271; correct?

21          A     SBC's but, yes.

22          Q     Right?  Correct?



1                   If I refer to AT&T, I am referring to  
2   the company you know as SBC. But if there's any --  
3   if you have any confusion as to which company I'm  
4   referring to, please let me know and I'll try to  
5   clear it up.

6                   You recall, don't you, that Mr. Ehr  
7   testified in his direct that this 271 application and  
8   investigation provided AT&T, or SBC, an incentive to  
9   provide good quality wholesale service; correct?

10           A     That's his testimony to which I respond.

11           Q     Okay. Now in analyzing Michigan data from  
12   2003 through 2005, you are aware, aren't you, that  
13   AT&T had already received 271 approval for Michigan  
14   by that time; correct?

15           A     Well, you asked me, in analyzing those  
16   data, did I recognize that. For purposes of this  
17   proceeding, yes, I was aware of that, but that's not  
18   the question for which I'm reporting the results.

19           Q     Understanding that, I'm just making it  
20   clear that you are aware that at the time -- the data  
21   that you -- that you reviewed in Michigan there was  
22   no 271 application or investigation pending at that

1 time; correct?

2 A It's post-271, that's correct.

3 Q So by definition, your analysis did not  
4 include any data from the period when SBC's Section  
5 271 application was pending; correct?

6 A Yes, that's correct.

7 Q In fact, isn't it true that your Michigan  
8 analysis intentionally excluded data from the period  
9 before Michigan received 271 approval?

10 A Yes.

11 Q I'd like to mark as Cross Exhibit 101, a  
12 multi-page document titled Direct Testimony of August  
13 Ankum, Ph.D.

14 MR. METROPOULOS: May I approach, your Honor?

15 ADMINISTRATIVE LAW JUDGE SAINSOT: Sure.

16 MR. METROPOULOS: Thank you.

17 MR. ROWLAND: Jim, do you have another copy?

18 MR. METROPOULOS: I don't have any other extra  
19 copies.

20 ADMINISTRATIVE LAW JUDGE SAINSOT: Take a  
21 two-minute break and we could use the Xerox machine.

22 MR. METROPOULOS: All right. That will be fine.

1           ADMINISTRATIVE LAW JUDGE SAINSOT: Any other  
2     copies that we need?

3                                 (Whereupon, a brief  
4                                 recess was taken.)

5           ADMINISTRATIVE LAW JUDGE SAINSOT: You can  
6     proceed.

7     BY MR. METROPOULOS:

8           Q     Dr. Ankum, have you had a chance to review  
9     what has been marked as SBC Cross Exhibit 101?

10          A     Yes.

11          Q     And do you recognize this as the public  
12     version of your direct testimony in Michigan?

13          A     Yes.

14          Q     And just like you did with your Illinois  
15     testimony a few minutes ago, you affirmed in a  
16     hearing room in Michigan that this document Cross  
17     Exhibit 101 was your testimony for Michigan; correct?

18          A     Well, I did recognize that this was my  
19     testimony.

20          Q     Right. And in Michigan, you affirmed in  
21  
22

1 under oath that it was your direct testimony in that  
2 proceeding; correct?

3 A Yes.

4 Q And you were under oath then just like you  
5 are today; correct?

6 A Yes.

7 Q I'd like you to direct your attention to  
8 Page 19, Lines 1 through 2 of Cross Exhibit 101.

9 A Yes.

10 Q You said at the time, didn't you, that,  
11 Because the 271 approval process included significant  
12 structural changes to SBC systems, pooling the pre-  
13 and post-271 approval data into one data set would be  
14 improper. Isn't that what you said?

15 A Yes.

16 Q And that is why you've excluded the data  
17 prior to this date to -- as you say, purify the  
18 analysis; correct?

19 A Yeah. There was a footnote there, footnote  
20 21, which is part of that sentence that states:  
21 Again, the primary goal of my data analysis was to  
22 examine SBC's recent performance and determine the

1 extent to which the K-table in SBC's performance plan  
2 affects SBC's performance.

3 Q And in light of the primary goal you  
4 reference in the footnote, you excluded the data  
5 prior to 271 approval, as you say, purify the  
6 analysis; correct?

7 A Yes.

8 Q And you go on to say that, Prior to  
9 September 2003, SBC-Michigan had two distinctive  
10 incentives for maintaining or improving its wholesale  
11 service quality, one being the remedy mechanism and  
12 the goal; the second being the goal of obtaining 271  
13 approval itself. Do you see where you said that?

14 A Yes. Line 6 and 7.

15 Q Can you show me where you reported any of  
16 those lines of analysis from your Michigan testimony  
17 here in Illinois?

18 A Oh, in many lines in my Michigan testimony  
19 that I reported. Well, first of all, I only report  
20 the public portion of my testimony. But the Michigan  
21 testimony is 28 pages.

22 My Illinois testimony is 15 pages; and,

1 of course, my Illinois testimony has a different  
2 focus. First of all, it's a rebuttal testimony; so  
3 it's tied into Mr. Ehr's testimony in this  
4 proceeding.

5 The focus of the Michigan testimony was  
6 on the analysis of the K-table, which is a distinctly  
7 different focus. So there's large portions of my  
8 Michigan testimony that were not included in my -- or  
9 referenced in my Illinois testimony.

10 Q In light of the answer you just gave me, I  
11 take it the answer to my question is that you did not  
12 report anywhere in your Illinois testimony this anal-  
13 -- the analysis we just read from your Michigan  
14 testimony about the impact of 271 approval and why it  
15 was excluded from your analysis;  
16 correct?

17 A Well, I'm not sure that it is correct. I  
18 have to reread my testimony. I don't believe that  
19 any portions of my Michigan testimony have been  
20 included verbatim in my Illinois testimony. I have  
21 paraphrased much of it.

22 I'm not entirely sure that this

1 particular point is not captured in the paraphrases  
2 somewhere else in the Illinois testimony. I would  
3 have to review that.

4 Q And as you sit here today, though, you  
5 cannot identify a single line in your Illinois  
6 testimony where you paraphrased, quoted, cited or  
7 otherwise described the three sentences we just read  
8 about the impact of 271 approval on your analysis of  
9 Michigan performance results; correct?

10 A If you give me some time to review my  
11 testimony.

12 Q Please.

13 A I believe that on Page 10 of 15 in my  
14 Illinois testimony I state precise dates that are  
15 covered in my Michigan analysis. But those dates are  
16 September 2003 through August 2005.

17 Q At the pages you just referenced, did you  
18 report the fact that you had excluded data from --  
19 recognizing that you reported the dates of data that

20

21

22

1     you analyzed, did you report that you've excluded  
2     data prior to 271 approval or why you did so?

3             A     Well, I didn't give an explanation. I just  
4     stated the range of dates that were covered.

5             Q     Given that answer, I take it that you did  
6     not explain the data you had covered excluded the  
7     period prior to 271 approval; is that correct?

8             A     That's correct. There's only one sentence  
9     here in the entire extensive discussion of the  
10    underlying data series and what motivated the  
11    analysis that was found in the Michigan testimony, I  
12    did not burden the record with the --

13            Q     You did not include that, that's correct.

14                   Now, I'd like to talk to you about the  
15    details of your Michigan analysis. As I understood  
16    it, you did two comparisons of performance results.  
17    Please turn to Page 9, Lines 187 through 191 of your  
18    rebuttal testimony.

19            A     Yes.

20            Q     As I understand it, first, you compared  
21    months with the remedy plan in Michigan including  
22    what is known as a K-table and months -- against the



1 months where the plan did not include the K-table;  
2 correct?

3 A That's correct.

4 Q You would agree with me, wouldn't you,  
5 Dr. Ankum, that there are other things that can  
6 effect performance rather than just the specific  
7 rules of the remedy plan that happens to be in  
8 effect; correct?

9 A Are you asking about the variations in  
10 performance or the level of performance?

11 Q The level of performance. For example, one  
12 thing that might effect the level of performance  
13 might be the weather at the time; correct?

14 A Yes.

15 Q And one of the things that might effect  
16 performance might be the season, say, winter versus  
17 summer; correct?

18 A Depends on which performance measures  
19 you're talking about. Some would be affected and  
20 others would not be affected, things like  
21 flow-through are unaffected by weather or by  
22 seasonality.

1           Q     Certainly some things could be affected by  
2 weather or seasonality; correct?

3           A     Some things could be.

4           Q     You did not look at the effects of weather  
5 or season or any other factor during that period;  
6 correct?

7           A     That's correct.

8           Q     In fact, you would agree, wouldn't you,  
9 that an observed correlation between two variables  
10 like the existence of a K-table on the one hand and  
11 the level of performance on the other does not  
12 necessarily apply that one variable causes the other?

13          A     No, but you can do a statistic test for  
14 that.

15          Q     In fact -- I'd like you to turn to SBC  
16 Cross Exhibit 1, Page 26, please.

17               ADMINISTRATIVE LAW JUDGE SAINSOT:   You mean  
18 101; right?

19               MR. METROPOULOS:   Did I say 1?  I apologize,  
20 your Honor.  It is 101.  Thank you.

21               ADMINISTRATIVE LAW JUDGE SAINSOT:   You're  
22 welcome.

1           THE WITNESS: That's the Michigan testimony?

2   BY MR. METROPOULOS:

3           Q     Yes.

4           A     And which page do you want me to look at?

5           Q     Page 26.

6           A     Yes, I'm there.

7           Q     And I'd like you to look at footnote 28.

8   Are you with me?

9           A     If you give me a second.

10                  Yes.

11          Q     Okay. And in the text I understand that

12   you were referring to, among others things, the

13   limitations of regression models. Do you see the

14   text that immediately precedes footnote 28?

15          A     Yes.

16          Q     And the regression model is the model you

17   used in Michigan; correct?

18          A     Yes.

19          Q     And in the footnote, you explain that among

20   the limitations of a regression model is the fact

21   that observed correlation between two variables does

22   not necessarily imply that one variable causes the

1     other.   Is that correct?

2           A     That's correct.

3           Q     Can you show me where that sentence or that

4     thought appears in your Illinois testimony?

5           A     It does not.

6           Q     Okay.   Please turn --

7           A     It is done by reference.   I explicitly

8     reference my testimony in Michigan, which obviously

9     is available to SBC.

10          Q     But you did not attach a copy; correct?

11          A     I did not attach a copy, but I made an

12     explicit reference to the Michigan testimony.

13          Q     I'd like you to turn back to your rebuttal

14     testimony, Page 12, Lines 243 through 244.

15          A     Yes.

16          Q     Your conclusion was that there was a

17     statically significant -- or you report the

18     conclusion that there was a statistically significant

19     difference in performance with and without the

20     so-called K-table; correct?

21          A     Yes.

22          Q     Your testimony here in Illinois does not

1 say what the actual numeric difference was; does it?

2 A That's correct.

3 Q So your testimony for Illinois does not say  
4 what the level of performance was without the  
5 K-table; correct?

6 A That's correct. There's a large amount of  
7 proprietary information underlying the analysis that  
8 I did not include in the Illinois testimony.

9 Q You recognize that in Illinois you have the  
10 ability to file proprietary versions of testimony; is  
11 that correct?

12 A I'm not sure I can take proprietary  
13 information from Michigan and put it in an Illinois  
14 proceeding.

15 Q Regardless of what the reasons were, your  
16 test- -- or for those reasons, your testimony for  
17 Illinois does not state what the level of performance  
18 was without the K-table; correct?

19 A That's correct.

20 Q And it does not state what the level of  
21 performance was with the K-table; correct?

22 A That's correct.

1           Q     Did you have counsel request that the --  
2     you be able -- be allowed to disclose the information  
3     from Michigan -- that information from Michigan in  
4     Illinois?

5           A     We had a discussion about what information  
6     I could disclose, and I reviewed the proprietary  
7     agreement that I signed in Michigan, and I concluded  
8     that there was only a limited amount of information  
9     that I could use.

10                     And the guiding principle that I at  
11     least as a witness used is that I feel free to use  
12     any portion of my public version of the Michigan  
13     testimony in a proceeding elsewhere, in this case  
14     Illinois, the portions that are proprietary, declared  
15     proprietary in Michigan, I, for myself, used the rule  
16     that I cannot use those in other proceedings --

17           Q     Okay.

18           A     -- in other states.

19           Q     Actually, my question was a little simpler  
20     than that. I wasn't interested so much in your  
21     thought process as to whether, objectively, did you  
22     ask -- have anyone ask SBC whether it be okay under

1 the proprietary agreement to disclose the data. I  
2 take your answer to that is no?

3 A That's right. I did not ask that.

4 Q So for all we know from your Illinois  
5 testimony, the difference you're talking about  
6 between performance with and without the K-table  
7 might be the difference of -- might be less than a  
8 percentage point; correct?

9 A I cannot speak to the underlying  
10 proprietary.

11 Q Okay. But I'm not asking you to disclose  
12 any of the proprietary data. All I'm saying is that,  
13 from all we know from Illinois, the difference could  
14 be as low as a percentage point or even less;  
15 correct?

16 A It can be, theoretically, without looking  
17 at any data or knowing any context, the bystander  
18 that I take off the street, if there's a number and  
19 that number can range. . .

20 THE COURT REPORTER: I'm sorry, could you  
21 please speak up.

22 THE WITNESS: If the number is presented, it

1     can range anywhere between zero percent and 100  
2     percent. I can't really start divulging.

3     BY MR. METROPOULOS:

4             Q     And all --

5             A     I can't even suggest to you what that range  
6     is. I feel uncomfortable now. It's data that is  
7     presented by your company, so I presume that you have  
8     a means of bringing it into the public domain if you  
9     want to.

10            Q     All I'm asking you at this point is whether  
11     you -- whether you disclosed where in that range from  
12     zero to 100 the difference fell, and I take it the  
13     answer to that is no; correct?

14            A     I can't divulge that.

15            Q     However, you did testify in Michigan,  
16     didn't you, that difference in performance, whatever  
17     the number was, was, as you put it, was relatively  
18     modest; isn't that correct?

19            A     Yes.

20            Q     And given that relatively modest  
21     difference, in Michigan, you did not go so far as to  
22     conclude



1     that AT&T intentionally responded to weakened  
2     incentives with inferior performance; isn't that  
3     correct?

4                     If it's helpful, you can turn to  
5     Page 26, Lines 11 through 12 of Cross Exhibit 101.

6             A     Yes.

7             Q     And do you see -- specifically, as long as  
8     we're on that page, on Cross Exhibit 101, Page 26,  
9     Line 11, it says you would not go so far as to  
10    conclude that SBC-Michigan intentionally responded to  
11    weakened incentives with inferior performance;  
12    correct?

13            A     Yes.

14            Q     Can you show me where that disclaimer  
15    appears in your Illinois testimony?

16            A     It does not.

17            Q     Now --

18            A     For the same reasons that I explained  
19    earlier about different focus in the Michigan  
20    testimony being more comprehensive, me having  
21    paraphrased only certain smaller excerpts of,  
22    et cetera, et cetera.

1           Q     For whatever reason, though, it does not  
2 appear in your Illinois testimony?

3           A     That's right.

4           Q     Now, as we were talking earlier, you -- in  
5 Michigan, you did disclose the percentage of measures  
6 made or satisfied with and without the K-table,  
7 correct, understanding that you don't want to reveal  
8 those percentages in Illinois; correct?

9           A     Yes.

10          Q     And you understood -- and as I understand  
11 it, you are -- you did not want to disclose the data  
12 in Illinois because the data you used were  
13 confidential to SBC, and as you pointed, SBC could,  
14 if it wanted to, place that data into the record;  
15 correct?

16          A     I'm not expressing a legal opinion. I  
17 think those were my thoughts in that.

18          Q     Okay. Now, you understand that we are also  
19 subject to a proprietary agreement in Illinois?

20          A     Really, I'm not testifying as a lawyer  
21 here. I don't really know exactly what you're bound  
22 by and what you're not bound by.

1           Q     Okay.  Do you understand that there is a  
2     proprietary agreement in this proceeding or no?

3           A     In the Illinois proceeding or Michigan  
4     proceeding?

5           Q     This -- Illinois proceeding.

6           A     Yes.

7           Q     Okay.  I'd like to mark as Cross  
8     Exhibit 102, a two-page document.

9           MR. METROPOULOS:  May I approach, your Honor?

10          ADMINISTRATIVE LAW JUDGE SAINSOT:  Sure.

11          MR. METROPOULOS:  And, your Honor, just to make  
12     clear for the record, this data -- this exhibit was  
13     marked as confidential in Michigan and it has been  
14     tendered as confidential and subject to the  
15     proprietary agreement here in Illinois.

16          ADMINISTRATIVE LAW JUDGE SAINSOT:  Okay.

17     BY MR. METROPOULOS:

18          Q     Dr. Ankum, have you had the chance to  
19     review what's been marked SBC Cross Exhibit 102?

20          A     Yes.

21          MR. MacBRIDE:  I'm sorry.  Before you go on, let  
22     me just state for the record that, to this point in

1     this proceeding, just so this is clear, Dr. Ankum has  
2     not signed the protective agreement in this case  
3     because he has not been shown any confidential  
4     information in this proceeding.

5                     So I'm just advising. Obviously,  
6     presumably, he has seen what you've handed him  
7     previously, but I'm just advising he has not signed  
8     the Illinois Protective Agreement.

9     BY MR. METROPOULOS:

10            Q     Would it be acceptable to you, Dr. Ankum,  
11     to sign the protective agreement for Illinois?

12            A     Yes.

13            Q     And to maintain the same confidentiality  
14     you had for Michigan here in Illinois?

15            A     Yes.

16            Q     And have you had the chance to review what  
17     has been marked as SBC Exhibit 102?

18            A     Yes, I have.

19            Q     Do you recognize the first page as the  
20     cover of the confidential version of your direct  
21     testimony for Michigan?

22            A     Yes.

1           Q     Please turn to the second page. And the  
2     question I'm about to ask you will not require you to  
3     reveal the actual numbers that appear on the page.

4                     But am I correct that this second page  
5     is a page from your Michigan testimony?

6           A     Yes, I believe so.

7           Q     And, again, without disclosing the actual  
8     numbers that appear on the page, am I also correct  
9     that the table in the center of that Page 2 shows the  
10    percentage of noncompliant performance measures with  
11    and without the K-table?

12          A     Yes.

13          Q     Okay. And now I'd like you to go back to  
14    Page 12, Line 244 of your rebuttal testimony in  
15    Illinois.

16          A     Yes.

17          Q     Your testimony is that the difference we  
18    just looked at with and without the K-table was  
19    statistically significant; correct?

20          A     Yes.

21          Q     You did not perform any analysis to see  
22    whether the difference was competitively significant;

1 did you?

2 A I did not do a quantitative analysis. I  
3 did a qualitative analysis.

4 Q Okay. In other words then, you did not go  
5 out to see whether the difference we just described  
6 affected any consumer's decision; correct?

7 A Not as a quantitative analysis but as a  
8 qualitative analysis.

9 Q And as a qualitative analysis, you did not  
10 go out to see whether the difference affected any  
11 competitor's revenues; correct?

12 A Well, as a qualitative analysis I did but  
13 not as a quantitative analysis; that's correct.

14 Q So you don't have a numeric estimate of any  
15 impact on revenues; correct?

16 A Well, I do.

17 Q In your Michigan testimony?

18 A I didn't state it in my Michigan testimony.

19 Q Okay. You did not go out to see whether  
20 the difference in performance affected any  
21 competitor's costs, any numerical analysis; correct?

22 A I did not perform a numeric analysis and --

1           Q     You did not perform any numeric analysis of  
2     whether the difference in performance affected any  
3     competitor's market share; correct?

4           A     I did not do a numeric analysis but I did  
5     do a qualitative analysis.

6           Q     You did not do any analysis of what  
7     measures were made and what measures were missed,  
8     correct, you just looked at the overall percentages  
9     made or missed?

10          A     As reported in the testimony, yes.

11          Q     You did not look into whether AT&T missed  
12     the applicable standard only by a little or by how  
13     much, correct, you just looked at the percentage that  
14     were made or missed; correct?

15          A     Well, econometric analysis is performed  
16     from the underlying performance measures and is not  
17     expressed as percentage, but I'm reporting here on  
18     this Page 21 are the percentages. But econometric  
19     analysis did capture each individual performance  
20     measure.

21          Q     In your econometric analysis as you  
22     described it, did you consider only whether a

1 particular measure was made or missed, or did you  
2 consider the degree by which it was made or missed?

3 A He econometric analysis captures that, the  
4 latter part.

5 Well, it captures both.

6 Q Okay. I'd like you to turn to Page 8, Line  
7 173 of your rebuttal testimony in Illinois.

8 A Yes.

9 Q The second comparison you did was to look  
10 at the performance level on measures that were  
11 subject to remedies as opposed to measures that were  
12 not subject to remedies; correct?

13 A Yes.

14 Q Generically, have you heard the term  
15 diagnostic performance measure?

16 A Not specifically the phrase. I mean,  
17 individually, I've heard the word but not the  
18 diagnostic performance measured phrase.

19 Q Okay. You understand generally, though,  
20 that there are some measures in the scheme of things  
21 that are not subject to remedies but are simply being  
22 reported for informational purposes; correct?



1           A     That's my testimony.

2           Q     And you recognize, don't you, that whether  
3     a measure is or is not subject to remedies is  
4     something that is worked out by agreement between SBC  
5     and CLECs; correct?

6           A     That's my understanding --

7           Q     And one --

8           A     -- and condition.

9           Q     And one reason why a measure might not be  
10    subject to remedies is that everybody agrees that it  
11    doesn't necessarily reflect on SBC's behavior or  
12    performance; would that be correct?

13          A     That could be.

14          Q     Another reason why a measure might not be  
15    subject to remedies is that it's a new measure that  
16    the parties are just looking at to figure out whether  
17    it's meaningful; correct?

18          A     Yes.

19          Q     In looking at results of these non-remedy  
20    measures in Michigan in 2003 through 2005, you did  
21    not undertake any analysis, did you, of why those  
22    measures were not subject to remedies; correct?

1           A     That's correct.

2           Q     You just looked at the performance level on  
3     you measures that were not subject to remedies;  
4     correct?

5           A     Well, Mr. Ehr presented the data as if they  
6     were all subject to remedies, and I pointed out to  
7     the Commission that that's, in fact, not true; that  
8     only half the measures were subject to the remedies  
9     in the K-table.

10          Q     Regardless of what the issues were in  
11     Michigan, in Illinois you're saying that the level in  
12     comparing the performance on measures subject to  
13     remedies versus not subject to remedies, you did not  
14     attempt to go through and figure out why any  
15     particular measure was not subject to remedies;  
16     correct?

17          A     That's correct.

18          Q     You just looked at the performance level?

19          A     And how it impacted by what remedies were  
20     not.

21          Q     Okay. Turning to Page 8, Line 174 through  
22     175 of your rebuttal. Your conclusion, as I

1     understand it, was that there was a difference in  
2     performance between the remedied measures at  
3     non-remedied measures; correct?

4             A     That's correct.

5             Q     And, as before, due to concerns about the  
6     proprietary nature of the data, your testimony here  
7     in Illinois does not say what the actual numeric  
8     difference was; correct?

9             A     That's correct.

10            Q     And your testimony for Illinois does not  
11     say what the level of performance was for  
12     non-remedied measures; correct?

13            A     That's correct.

14            Q     And your testimony for Illinois also does  
15     not say what the level of performance was for  
16     measures that were subject to remedies; correct?

17            A     That's correct.

18            Q     Now in Michigan, you did disclose the  
19     percentage of measures made for remedied and  
20     non-remedied measures; correct?

21            A     Yes.

22            Q     And understanding again that the data you

1     used were confidential to SBC and accepting that you  
2     will sign the proprietary agreement in Illinois, I  
3     would like to show you as -- I would like to mark as  
4     Cross Exhibit 103, a two-page document.

5             MR. METROPOULOS:   May I, your Honor?

6             ADMINISTRATIVE LAW JUDGE SAINSOT:   You may  
7     approach.

8             MR. METROPOULOS:   Your Honor, for the record,  
9     as with Cross Exhibit 102, AT&T Cross Exhibit 103 is  
10    a confidential document.

11            ADMINISTRATIVE LAW JUDGE SAINSOT:   Okay.

12    BY MR. METROPOULOS:

13            Q     Dr. Ankum, have you had the chance to  
14    review what's been marked as AT&T Cross Exhibit 103?

15            A     Yes.

16            Q     As with the previous document, the  
17    questions I'm about to ask you are not intended to  
18    have you disclose on the public record any of the  
19    confidential information that appears thereon.

20                         If I ask a question that you feel  
21    requires you to divulged that information, please let  
22    me know and I'll try to reword it.   Is that

1 acceptable?

2 A Yes.

3 Q Do you recognize the first page of Cross  
4 Exhibit 103 as the cover of the confidential version  
5 of your rebuttal testimony from Michigan?

6 A Yes.

7 Q Please turn to the second page. Without  
8 revealing the actual numbers, am I correct that this  
9 is a page excerpted from your Michigan rebuttal;  
10 correct?

11 A Yes.

12 Q And, again, without disclosing the actual  
13 numbers that appear on this page, am I correct that  
14 the table show -- on Page 2 shows the percentage of  
15 noncompliant performance measures subject for  
16 compliant performance measures for measures that are  
17 subject to remedy payments and those not subject to  
18 remedy payments; is that correct?

19 A Yes. In addition to that, it also shows  
20 the data reported by Mr. Ehr.

21 MR. METROPOULOS: I have no further questions,  
22 your Honor.

1           ADMINISTRATIVE LAW JUDGE SAINSOT:  Anyone else  
2   with cross?

3                    Another none from staff?

4           MS. NAUGHTON:  None from staff.

5           ADMINISTRATIVE LAW JUDGE SAINSOT:  I have a  
6   couple of questions of Dr. Ankum.

7                    EXAMINATION

8                    BY

9                    ADMINISTRATIVE LAW JUDGE SAINSOT:

10           Q     I think these questions relate to my own  
11   curiosity rather than relevance.  So I apologize to  
12   begin with.

13                    I'm just curious what this case was  
14   about in Michigan.

15           A     The focus there was somewhat different but  
16   the underlying subject matter is very closely  
17   related.  The underlying subject matter being the  
18   presence of a remedy plan.

19                    Now, in Illinois, there is -- initially,  
20   the way I understand the chronology of the  
21   proceedings to be, the initial remedy plan included  
22   something called a K-table.  And the K-table is

1 easily -- most easily described as a statistical  
2 device that allows SBC a number of free passes, so to  
3 speak, on performance measures where they failed to  
4 perform on par that normally would translate into  
5 penalties. The introduction of a K-table would give  
6 them a number of free passes on that.

7                   Now that same K-table issue played in  
8 Michigan as well. And initially the K-table was  
9 included in the remedy plan. Well, subsequently --  
10 subsequent to actually the 271 approval in Michigan  
11 had been removed by the Commission.

12                   My understanding is that the base on  
13 which the Commission removed the K-table from the  
14 remedy plan was appealed by SBC, and I think it was  
15 remanded by the Court to the Commission and the  
16 proceeding that we just -- well, that has not been  
17 concluded, which I testified in the Michigan case  
18 11830, dealt with this question of should that  
19 K-table which gives SBC a number of free passes on  
20 performance measures where it fails, should that  
21 K-table be included or not. So in a nutshell that  
22 was the focus.

1                   Now, as part of that, of analyzing that  
2   question, should the K-table be removed or not, one  
3   of the issues that we put before the Commission is  
4   that the more you place SBC, or now AT&T, under a  
5   remedy plan with penalties, the more those penalties  
6   are, the more likely it is that the company will  
7   begin to respond to those penalties and improve its  
8   performance.

9                   Now that question of how does the  
10   company respond to incentives, financial incentives  
11   in the form of the penalties, that question, of  
12   course, is also before this Commission because that's  
13   exactly, I suppose, what the issue is, should there  
14   or should there not have been a remedy plan in place  
15   in 2002 during those three critical months.

16                  And that question hinges in part on,  
17   well, does that added incentive induce the company to  
18   improve its performance, its wholesale performance?

19                  So in that sense, the empirical analysis  
20   that I did in Michigan very nicely fits the current  
21   proceeding; and there we thought that the Commission  
22   would benefit from that empirical analysis.



1 ADMINISTRATIVE LAW JUDGE SAINSOT: I have no  
2 further questions. Thank you.

3 THE WITNESS: You're welcome.

4 MR. MacBRIDE: May I have a short break to consult  
5 with the witness?

6 ADMINISTRATIVE LAW JUDGE SAINSOT: Sure. Five  
7 minutes?

8 MR. MacBRIDE: Yes.

9 ADMINISTRATIVE LAW JUDGE SAINSOT: Okay.

10 (Whereupon, a brief  
11 recess was taken.)

12 ADMINISTRATIVE LAW JUDGE SAINSOT: You can  
13 proceed.

14 MR. MacBRIDE: We have a few questions on  
15 redirect.

16 REDIRECT EXAMINATION

17 BY

18 MR. MacBRIDE:

19 Q Dr. Ankum, do you believe that the fact  
20 that the data you used in your Michigan analysis,  
21 which you reported the results of in this testimony,  
22 is the fact that that analysis was based on periods

1 entirely after SBC-Michigan had obtained Section 271  
2 approval in any way distracts from the usefulness of  
3 your analysis for purposes of this proceeding?

4 A No. And the reason is that the purpose of  
5 the analysis in Michigan was to show how the company  
6 responds to financial incentives that are introduced  
7 through the remedy plan.

8 And as I explain before the break to  
9 your Honor, there were two alternative remedy  
10 plans. One with severe penalties and one with lesser  
11 penalties, and they were in place at various points  
12 over the period that I analyzed. And the econometric  
13 analysis as well as the discussions that took place  
14 demonstrated that performance of SBC improves the  
15 moment that you make the financial incentive more  
16 severe, i.e., increased penalties.

17 Now, that particular analysis in that  
18 conclusion I think has a direct bearing on the  
19 proceeding here, and the fact that the time periods  
20 are post 271 approval is really immaterial in that  
21 sense because we're simply looking at, does the  
22 company respond to an incentive structure? And so it

1 does not really matter whether that is pre-271  
2 approval or post-271 approval.

3 Q In the Michigan data, the period when there  
4 was a more severe financial incentive for SBC to  
5 perform was the period when the remedy plan did not  
6 include a K-table; correct?

7 A That's correct.

8 Q And the period when there was less of a  
9 financial incentive for SBC to perform was the period  
10 when there was a K-table in Michigan remedy plan;  
11 correct?

12 A Yes.

13 Q And if you look at AT&T Illinois  
14 cross-examination Exhibit 102, Page 2 and looking at  
15 the confidential table -- and I don't want you to  
16 disclose the numbers on that table -- but there are  
17 three time periods there.

18 Can you just state for the record which  
19 of those time periods corresponded to when the  
20 K-table was in effect in the Michigan remedy plan and  
21 which time periods were the period when the K-table  
22 was not in effect in the Michigan remedy plan.

1           A     The periods that are reflected in that  
2     table, table one, it's in the third period, May  
3     through August 5 that the K-table is in effect. The  
4     other two periods it was not in effect.

5           Q     Now, in response to some questions from  
6     AT&T Illinois counsel, you indicated that you had  
7     done, in connection with your Michigan testimony, a  
8     qualitative analysis of the impacts of the  
9     differences in SBC-Michigan's performance between the  
10    period with the K-table and the period without the  
11    K-table on such things as CLECs related to compete,  
12    or competitive, CLEC's cost and so forth. Could you  
13    summarize what that qualitative analysis was?

14          A     Yes. This qualitative analysis goes to the  
15    question of whether the variations that may -- if you  
16    just look at the numbers and if you just look at the  
17    statistics, they may appear like relatively small  
18    percentages. And there -- they won't be portrayed by  
19    SBC as small variations and change in the level of  
20    performance.

21                   The qualitative analysis goes towards  
22    interpreting those relatively small varia- -- what

1 appears statically relatively small variations and  
2 explaining that in terms of how it may impact the  
3 CLEC customers and the CLEC's position in the  
4 marketplace.

5                   One of the issues that I talked through  
6 and talked through both with my colleagues at QSI as  
7 well as with clients has to do with how a CLEC  
8 approaches a new client. Let's say that -- to make  
9 it germane to the situation, let's say in Illinois,  
10 the CLEC would approach, let's say, a client in the  
11 Sears Tower that may have a thousand DS-1 circuits.

12                   Typically, the CLEC does not go to a  
13 client and say, Give me all your facilities. The way  
14 it typically works is that a client will be -- or a  
15 CLEC will be with a particular client for a long  
16 period of time trying to get long-distance.

17                   At some point, a customer may say, okay,  
18 I'm going to need, let's say, an additional 30 DS-1s  
19 for my business. I'm going to give those to you.  
20 I'm going to keep my thousand DS-1s with SBC but I'm  
21 going to see how you do on those 30. Now, that's a  
22 trial period.

1                   Now, all that the customer has is SBC's  
2   performance and CLEC's performance and it's going to  
3   see how the CLEC does relative to SBC. Now, the  
4   small variation in performance there in terms of  
5   delivery time, in terms of an outage, all these kind  
6   of things, the customer will be comparing CLEC with  
7   SBC.

8                   Now even though that variation may  
9   appear small, if that variation happens to be during  
10  the trial period where a CLEC is trying to get more  
11  business from a large customer, that small variation  
12  can translate in a customer saying, well, I wasn't  
13  really all that impressed. I may give you a little  
14  bit more or I may not give you anything more. But  
15  I'm surely not going to shift my thousand DS-1s that  
16  I have completely to you because I'm going to keep  
17  those with SBC.

18                  So just because something may show up  
19  statistically as very small, and just because  
20  Mr. Ehr when he is just looking at the data will say,  
21  the variations are small, that doesn't mean that the  
22  impact on the end user customer may not be very

1 significant in terms of how that customer perceives  
2 the CLEC in the marketplace as a competitive  
3 alternative. There's a magnifying factor.

4 Q Now, Dr. Ankum, your assignment in this  
5 case was to respond Mr. Ehr's direct testimony;  
6 correct?

7 A Yes.

8 Q And do you recall, in terms of quantitative  
9 results, Mr. Ehr attempted to demonstrate that  
10 SBC-Illinois had a satisfactory service quality in  
11 the period in question in this case by presenting a  
12 table that showed the percent of performance measures  
13 subject to remedy that for which SBC met the  
14 benchmark during the relative period; is that  
15 correct?

16 A Yes.

17 Q And, in fact, he show that same percentage  
18 met more a longer period than just the three months  
19 in this case; correct?

20 A Right.

21 Q And if I show you Page 10 of Mr. Ehr's  
22 direct testimony, he, in fact, reported that

1 information for each month from January 2002 to  
2 December 2003; correct?

3 A Yes.

4 Q And in his testimony, Mr. Ehr did not  
5 report the number of percentage -- excuse me, the  
6 number of performance measures that were missed in  
7 each month; did he?

8 A Not to my knowledge.

9 Q And he did not report the actual results by  
10 performance measure; did he?

11 A Not to my knowledge.

12 Q And he didn't report any information on the  
13 extent to which the performance measures that were  
14 missed whether they missed by a small amount or a  
15 large amount; did he?

16 A That's correct.

17 Q And he didn't present any quantitative or  
18 qualitative analysis of the impact of the missed  
19 performance measures in any of these months on CLEC's  
20 competitive position or costs or that they even  
21 satisfied their customers; did he?

22 A I don't believe he did.



1           Q     And Mr. Ehr didn't present any information  
2     in his direct testimony on the relative significance  
3     of the performance measures that were missed during  
4     these months in terms of the CLEC's cost and their  
5     ability to serve their customers; did he?

6           A     He did not.

7           Q     Now, directing your attention to AT&T  
8     Illinois Cross Exhibit 101, and particularly  
9     Page 19.

10          A     Yes.

11          Q     Page 19, Lines 4 through 7, I believe. SBC  
12     counsel asked about this sentence: Further, prior to  
13     September 2003, SBC-Michigan had two distinctive  
14     incentives for maintaining, slash, improving its  
15     wholesale service quality, dash, the remedy mechanism  
16     and the goal of obtaining 271 approval itself, while  
17     after September 2003, SBC-Michigan's remedy plan was  
18     supposed to serve as SBC-Michigan's incentive, among  
19     others, for maintaining, slash, improving wholesale  
20     service quality performance.

21                     Do you see that testimony?

22          A     Yes.

1           Q     Now, you state here on Line 5 that prior to  
2     September 2003, SBC-Michigan had two distinctive  
3     incentives for maintaining and improving its  
4     wholesale service quality; is that correct?

5           A     Yes.

6           Q     And I take it one of those incentives was  
7     the desire to obtain Section 271 approval?

8           A     Yes.

9           Q     And the other incentive was the remedy plan  
10    that was in effect in Michigan?

11          A     Yes.

12          Q     And do you believe that the -- the fact  
13    that SBC-Michigan or SBC-Illinois was seeking to  
14    obtain Section 271 approval during the period --  
15    during a particular period is sufficient to warrant  
16    having no remedy plan in effect during that period?

17          A     No. And I discuss this in part in my  
18    testimony, but the incentives that come with the 271  
19    approval process and the incentives of the remedy  
20    plan do not substitute but they complement. They  
21    complement each other.

22                   And the reason I say that they're not

1 substitutes but complements is because the remedy  
2 plan embodies a number of components and the 271  
3 approval process does not have. 271, of course, sets  
4 out the desired goal, which now has been achieved by  
5 SBC, to be able to get into the long-distance market.

6           The remedy plan embodied two components  
7 that 271 does not. One is that it has explicit  
8 penalties for subpar performance. Now, these  
9 penalties can be very significant. I believe that  
10 staff witness McClerren in this case in his testimony  
11 quantifies the penalties during that particular  
12 period here. And I think for October, he states that  
13 the penalties incurred by SBC actually exceed \$4  
14 million.

15           Now, SBC may be a large company, but a  
16 penalty of \$4 million per month begins to add up very  
17 quickly to real money. And a penalty like that, I  
18 think will sting the company into improving its  
19 performance whether it wants to or not, whether it  
20 may feel that the increased performance will enhance  
21 the competitive position of the CLECs in the market.  
22 \$4 million is a significant penalty. 271 does not

1 include anything like that.

2                   Secondly, and this is very important,  
3 the penalties that are paid out by SBC through CLECs,  
4 they are actually liquidated damages. In the remedy  
5 plan there's an explicit recognition that when SBC is  
6 missing on performance measures, that the CLECs are  
7 being hurt. It's not just, oh, SBC missed a  
8 particular performance measure. No, the CLEC  
9 actually feels the ramifications off that.

10                   Now, one can do a very specific  
11 analysis, one can go into, you know -- could, I  
12 think, as SBC has suggested, go to a complaint case  
13 where they can look on a particular instance of  
14 missing a performance measure and analyze what the  
15 costs are to the CLEC and whether or not a particular  
16 customer was missed because of that.

17                   I think the remedy plan rightly cuts  
18 through that entire harass of complications and says,  
19 the remedies that the plan provides are a proxy for  
20 liquidated damages. It is an explicit recognition.  
21 The CLEC is being harmed by subpar performance and  
22 not only subpar but now we're going to be trying to

1     make the company -- the CLEC whole again through the  
2     payout of these monies, which as you know, for  
3     October it was over \$4 million.

4                     So if there were only a 271 approval  
5     process in place, the -- and, clearly, there would be  
6     performance measures were SBC fails, there would be  
7     no compensation for the CLECs. The liquidated  
8     damages will completely fall away.

9                     And so not only would SBC have a less of  
10    an incentive to perform. There would be damage to  
11    the CLEC for which it would not be compensated. And  
12    that simply wouldn't be right.

13            Q     And finally, Dr. Ankum, is it your  
14    understanding that SBC-Illinois was attempting to  
15    obtain Section 271 approval for Illinois over an  
16    extended period of time?

17            A     Yes. And that's the other thing, while the  
18    remedy plan is performing direct financial incentives  
19    to SBC almost on a monthly basis, the 271 approval  
20    process was drawn out over a much longer period the  
21    company has been trying to get into the long-distance  
22    market. I believe since -- I would almost say 1996

1 or before that even. I think the Customer First  
2 Program that Ameritech initiated in Illinois was its  
3 first attempt to get a quid pro quo, the ability to  
4 go into the long-distance market.

5 So that is -- even though that was not  
6 a, formally, 271 process, the term 271 stems from the  
7 1996 Act. But, surely, since 1996, even though the  
8 company had not formally applied, the promise of  
9 getting into the long-distance market has been on the  
10 table and was not at all obvious that in 2002 did the  
11 company actually, you know, received that permission.

12 So, again, that's a much more drawn out  
13 long-term process than the immediacy of the remedy  
14 plan.

15 MR. MacBRIDE: That concludes our redirect  
16 examination.

17 ADMINISTRATIVE LAW JUDGE SAINSOT: Any recross?

18 MR. METROPOULOS: Yes, your Honor. May I?  
19 Thank you.

20

21

22

1                               RECROSS-EXAMINATION

2                               BY

3                               MR. METROPOULOS:

4               Q     Dr. Ankum, you recall talking with  
5     Mr. MacBRIDE about your qualitative analysis and  
6     giving him a hypothetical involving the Sears Tower?

7               A     Yes.

8               Q     Can you show me where in your Illinois  
9     testimony that you looked to see whether there was a  
10    single order processed by SBC in 2002 that actually  
11    looked like your hypothetical?

12              A     I have not looked at that. It was truly a  
13    hypothetical.

14              Q     Okay. And can you show me where in your  
15    Michigan testimony you looked to see whether there  
16    was a single order that actually conformed to your to  
17    your hypothetical?

18              A     There is none.

19              Q     And can you show me where in your Illinois  
20    testimony you looked at the facts and circumstances  
21    of any order SBC processed in 2002?

22              A     I did not do a specific analysis of the

1 customers that would have been impacted by SBC's  
2 subpar performance.

3 Q I take it then that your answer is that  
4 there was no place in your testimony where you looked  
5 at the facts and circumstances of any order processed  
6 by SBC?

7 A That's correct.

8 Q And can you show me where in your Illinois  
9 testimony you looked at the facts and circumstances  
10 of any performance missed -- or missed performance  
11 measure?

12 A I've not reported on that part of the  
13 performance measures. I think the redirect asked --  
14 Mr. MacBRIDE did key of your questions about whether  
15 I had performed any analyses on how the missing of  
16 performance measures is impacting the CLEC's position  
17 in the marketplace and how it is impacting customers.

18 In response to that series of questions,  
19 I gave answers to you that I had not done a  
20 quantitative analysis but that I truly done a  
21 qualitative analysis, i.e., I've talked about how  
22 performance measures impact the CLEC's ability to



1        compete in the marketplace.

2                        I thought through the issues and that  
3        has -- well, that has found its way into my  
4        testimony, both my Michigan testimony and my Illinois  
5        testimony in terms of explaining to the Commission  
6        both here and in Michigan, that the liquidated  
7        damages component of the remedy plan is an absolutely  
8        essential component where the liquidated damages  
9        compensate the CLECs for damage that is done to them,  
10       something that is missing in the 271 approval  
11       process.

12                Q        Okay. I take it that your answer to my  
13        question is that there is no place in Illinois where  
14        you looked at the facts and circumstances of any  
15        performance missed in 2002 as opposed to the  
16        theoretical possibilities of how that -- how any  
17        given performance missed might effect the CLEC?

18                A        That's true. I've made a theoretical  
19        analysis, but I refer to it as qualitative analysis  
20        as opposed to a quantitative analysis, which I  
21        presume is what you referred to as the facts.

22                        I have not done the survey, for example.

1 I have not gone out and surveyed which end users or  
2 which CLECs were impacted by specific missed  
3 performances.

4 Q And you did not look at any one of the 150  
5 performance measures that SBC reports to determine  
6 what the impacts and circumstances of any make or  
7 miss was; correct?

8 A That's right. I have not done a survey.  
9 I've not done follow-ups with potential customers or  
10 missed customers or existing customers.

11 Q Turning to the subject you just raised of  
12 damages, can you show me where in your Illinois  
13 testimony there is any numeric estimate of damages to  
14 a CLEC -- to any CLEC?

15 A Again, we talked about it early. I did not  
16 report that in my file to rebuttal testimony but you  
17 asked me, do I have an assessment of what these  
18 damages are, and I can give you precise estimates if  
19 we go to staff witness McClerren's testimony. He  
20 gives the precise numbers of the remedies that SBC  
21 paid out.

22 Now, those remedies by the dollar are

1 liquidated damages, and they are proxies for the  
2 extent to which the CLEC has been harmed. So if you  
3 ask me, what is the damage done to the CLECs? The  
4 damage is in the amount of, October 2002, is  
5 \$4 million.

6 MR. METROPOULOS: Move to strike as  
7 non-responsive, your Honor. I asked the witness  
8 where in his testimony he did an estimate of damages.

9 MR. MacBRIDE: Well, Judge, his testimony includes  
10 his testimony here today. If  
11 Mr. Metropoulos wants to limit his questions to the  
12 written prefiled testimony, he can do so. But  
13 that -- he didn't in the question he asked the  
14 witness.

15 ADMINISTRATIVE LAW JUDGE SAINSOT: Hold on a  
16 second.

17 I'm going to deny your motion,  
18 Mr. Metropoulos. One thing that Dr. Ankum testified  
19 to in his direct is that it is difficult to measure  
20 damage.

21 So, there would be no point in -- I'm  
22 thinking how to explain it.

1                   If it's difficult to measure damages,  
2   then it follows -- it makes some sense that he didn't  
3   measure those damages because it's difficult to do.  
4   So his answer is responsive to your question in light  
5   of that other testimony.

6           MR. METROPOULOS:  Thank you, your Honor.  I  
7   have no further questions.

8           MR. MacBRIDE:  Nothing further.

9           ADMINISTRATIVE LAW JUDGE SAINSOT:  Okay.  You  
10   can step down.  Thank you.

11                   Who are we calling next?  Are we  
12   breaking for lunch.

13           MR. METROPOULOS:  It make sense to break for  
14   lunch.

15                   (Whereupon, a discussion  
16                   was had off the record.)

17                   (Whereupon, a lunch  
18                   break was taken.)

19           ADMINISTRATIVE LAW JUDGE SAINSOT:  I take it  
20   Mr. Dvorak is the next witness?

21           MR. METROPOULOS:  Mr. Ehr.

22           ADMINISTRATIVE LAW JUDGE SAINSOT:  Okay.

1 (Witness sworn.)

2 MR. METROPOULOS: May I proceed?

3 ADMINISTRATIVE LAW JUDGE SAINSOT: Sure.

4 MR. METROPOULOS: Before I proceed, your Honor,  
5 I would like to move into evidence SBC Cross  
6 Exhibits 101, 102 and 103, and ask that Exhibits 102  
7 and 103 be admitted on the confidential record.

8 MR. MacBRIDE: No objection.

9 ADMINISTRATIVE LAW JUDGE SAINSOT: You're  
10 moving for admission of all three?

11 MR. METROPOULOS: Yes. ADMINISTRATIVE LAW JUDGE  
12 SAINSOT: Okay. The motion is granted.

13 (Whereupon, SBC Cross  
14 Exhibit Nos. 101, 102 and 103  
15 were admitted into evidence.)

16 ADMINISTRATIVE LAW JUDGE SAINSOT: Counsel, you  
17 may proceed.

18 MR. METROPOULOS: Thank you, your Honor.

19 JAMES D. EHR,  
20 having been called as a witness herein, after having  
21 been first duly sworn, was examined and testified as  
22 follows:

1 DIRECT EXAMINATION

2 BY

3 MR. METROPOULOS:

4 Q Good afternoon, Mr. Ehr.

5 Could you please introduce yourself and  
6 give us your title.

7 A My name is James D. Ehr, E-h-r. I'm the  
8 director of performance measurements for AT&T Midwest  
9 Services.

10 Q And, Mr. Ehr, do you have before you copies  
11 of what of the direct testimony of James D. Ehr,  
12 which is to be marked AT&T Exhibit 104.0 and the  
13 rebuttal testimony of James D. Ehr, public and  
14 confidential versions, which are to be marked AT&T  
15 Exhibits 104.1 and 104.1C?

16 A I actually only have the proprietary  
17 version of my rebuttal, but I have the direct.

18 Q You are familiar with the public version of  
19 your rebuttal as well?

20 A Yes, I am.

21 Q And were all three of these exhibits  
22 prepared by you or at your direction?

1           A     Yes.

2           Q     And at this time, do you have any  
3     corrections you would like to make to Exhibits 104.0,  
4     104.1 or 104.1C?

5           A     No, I do not.

6           Q     If I were to ask you the questions that  
7     appear on those exhibits today, would your answers be  
8     the same?

9           A     Yes, they would.

10          Q     Mr. Ehr, do you also have before you what  
11     is to be marked AT&T Exhibit 105.0, the verified  
12     prehearing memorandum of AT&T Illinois?

13          A     Yes.

14          Q     And is that your verification following the  
15     last -- or at the very last page of that exhibit?

16          A     Yes, it is.

17          Q     And in filing that verification and signing  
18     it, did you verify that the factual statements in the  
19     prehearing memorandum that you referenced in your  
20     verification were true and correct to the best of  
21     your knowledge and belief?

22          A     Yes, I did.

1           Q     And are those factual statements true and  
2 correct today?

3           A     Yes, they are.

4           MR. METROPOULOS: Your Honor, at this time, I  
5 would like to move into evidence AT&T  
6 Exhibits 104.0, 104.1 104.1C and 105.0.

7           ADMINISTRATIVE LAW JUDGE SAINSOT: Any  
8 objection?

9           MR. MacBRIDE: No, ma'am.

10          ADMINISTRATIVE LAW JUDGE SAINSOT: Do you have  
11 copies of those for me?

12          MR. METROPOULOS: We provided a copy with the  
13 court reporter. We filed them on -- we served them  
14 and we were going to file them on e-docket.

15          ADMINISTRATIVE LAW JUDGE SAINSOT: The court  
16 reporter has a copy?

17                   Your motion is granted, counsel. AT&T  
18 Exhibits 104.0, 104.1 104.1C and 105.0 are admitted  
19 into evidence.

20

21

22



1 (Whereupon, AT&T  
2 Exhibit Nos. 104.0, 104.1 104.1C  
3 and 105.0 were admitted into  
4 evidence.)

5 MR. METROPOULOS: Thank you, your Honor. I  
6 would like to tender Mr. Ehr for cross-examination at  
7 this time.

8 MR. MacBRIDE: Before I start, just to clarify,  
9 is Exhibit 105 just Mr. Ehr's verification or the  
10 entire pretrial memorandum?

11 MR. METROPOULOS: It is the entire pretrial  
12 memorandum with Mr. Ehr's verification at the last  
13 page.

14 ADMINISTRATIVE LAW JUDGE SAINSOT: You can  
15 proceed.

16 MR. MacBRIDE: Thank you.

17 CROSS-EXAMINATION

18 BY

19 MR. MacBRIDE:

20 Q Good afternoon, Mr. Ehr.

21 A Good afternoon.

22 Q I have a few questions for you this

1       afternoon.

2                       Your testimony indicates that you've  
3       been director of performance measurement for the --  
4       what was the SBC Midwest Region, I guess now the AT&T  
5       Midwest Region, since June 1, 2001; is that correct?

6           A       That is correct.

7           Q       And is there a group or department that you  
8       are in charge of that you supervise that has a name?

9           A       There are a group of people that are  
10      referred to as the performance measurements group.  
11      We currently exist within the network services  
12      organization.

13          Q       What is the function of the performance  
14      measurements group?

15          A       The function of the performance  
16      measurements group is to, number one, compile the  
17      data and report the performance per the measures that  
18      have been approved by the various regulatory bodies.

19                    It's the -- the second responsibility is  
20      to process that data for determination of whether the  
21      remedy payments are required to CLECs or whether  
22      assessments are payable to the state government.

1                   It's also our responsibility to  
2   understand what that performance represents.   It's  
3   also our responsibility where there are shortfalls in  
4   performance to ensure those are investigated by the  
5   appropriate people, to make sure if there's areas  
6   that need improvement, and various other related  
7   activities all surrounding performance measurement  
8   process and the results themselves.

9           Q     So in that last function you described, I  
10   take it you're group would have some responsibility  
11   to report to the groups in the company that are  
12   actually providing the service for performing the  
13   substantive function that there may be some  
14   deficiency and they need to investigate it or make  
15   some reports or something like that?

16          A     We have regular interaction, what we call  
17   as business owners, who are people that are  
18   responsible for the processes that are being  
19   measured, and we interact with them regularly  
20   regarding performance that's been reported and what's  
21   going on in their business.

22          Q     Now, referring to the Illinois 271

1 proceeding that you discussed in your testimony, in  
2 that case, SBC-Illinois submitted wholesale  
3 performance measurement data for the months of  
4 September, October, and November 2002; correct?

5 A That is correct.

6 Q And that data was to be used by this  
7 Commission in determining whether SBC-Illinois'  
8 service quality performance was sufficient for the  
9 Commission to conclude that SBC-Illinois satisfied  
10 checklist item number two?

11 A I believe that to be one of the things that  
12 the Commission did with the data.

13 Q And, you know, checklist item two under  
14 Section 271 pertains to nondiscriminatory access to  
15 the Bell operating companies operational support  
16 systems; correct?

17 A That is my understanding, yes.

18 Q Do you know when SBC-Illinois filed the  
19 three months of performance data with the Commission?

20 A I believe we filed it in -- well, I don't  
21 want to use the wrong term when I say "filed," but I  
22 believe we submitted it in February of 2003.

1           Q     Okay.  Would you accept, subject to check,  
2     that it was January 17th, 2003?

3           A     That would be subject to check, sure.

4           Q     I believe you gave us that date in a data  
5     request response.

6           A     Okay.

7           Q     Were you involved in the efforts of the SBC  
8     affiliated in Michigan who obtained a favorable 271  
9     recommendation from the Michigan Commission?

10          A     I submitted a similar testimony as I did in  
11     Illinois in all five of the Midwest states.

12          Q     And in Michigan, did the SBC affiliate also  
13     submit to that Commission three months of performance  
14     data in the 271 proceeding consisting of the months  
15     of October through November 2002?

16          A     Subject to check, I believe the -- you say  
17     what -- I'm sorry, what months did you mention?

18          Q     Was it the same three months that you used  
19     in --

20          A     No.  I believe it was a different three  
21     months.  It was -- because of the timing of the  
22     proceedings, I believe it may have been earlier in

1       2002.   Probably late summer to fall.

2               Q     All right.   June through August, perhaps?

3               A     Something like that.   I'd have to check.

4               Q     If you would look at your direct testimony,

5       Lines 96 to 98, please.

6               A     I'm there.

7               Q     And you there have a statement, The

8       BearingPoint tests of OSS and Performance Measurement

9       were ongoing.   Do you see that?

10              A     Yes, I do.

11              Q     And at that point, are you referring to the

12       September through November 2002 period?

13              A     I believe in the context of that whole

14       paragraph, I'm referring to the October to December

15       of 2002.

16              Q     Okay.   Do you know when the BearingPoint

17       tests of SBC-Illinois' OSS and Performance

18       Measurements began?

19              A     I believe they began in 2001, perhaps the

20       first part of 2001.   When I came into the position

21       that I'm in today, in June of 2001, the test was

22       already underway.

1           Q     And do you know when the BearingPoint tests  
2     of SBC-Illinois OSS and the Performance Measurements  
3     were completed?

4           A     They completed -- I know they completed  
5     sometime after this point. I don't know the exact  
6     date or months, but I believe it was in 2003.

7           Q     And when you refer to the BearingPoint  
8     tests of SBC-Illinois Performance Measurements,  
9     exactly what was BearingPoint testing?

10          A     My understanding, my recollection, was that  
11     BearingPoint was testing with regard to the  
12     performance measurements whether we were properly  
13     calculating those results, whether we were retaining  
14     data properly.

15                     I don't recall specifically if the whole  
16     remedy payment was part of that, but it was a  
17     comprehensive test of our entirely performance  
18     measurement process.

19          Q     And with respect to the BearingPoint test  
20     of SBC-Illinois OSS, what was BearingPoint testing?

21          A     In terms of the OSS, they were testing both  
22     the manual processes and the systems that were in

1 place at the time for the purpose of providing  
2 service to CLECs, ordering, provisioning,  
3 maintenance.

4 Q And what do you understand to be the  
5 objective of the test?

6 A The objective of the test was to identify  
7 any deficiencies in those processes and have SBC  
8 correct those deficiencies such that the results of  
9 the test -- so that SBC at the time, the Commission  
10 could be confident that the systems that were in  
11 place were providing adequate service to CLECs to  
12 ensure that they could get services and product  
13 without discrimination.

14 Q Did the BearingPoint tests of SBC-Illinois'  
15 OSS have pass/fail criteria?

16 A That is my understanding, yes.

17 Q Now you also refer at the same point in  
18 your testimony to the fact that Ernst & Young was  
19 conducting its performance measurement audit during  
20 those months?

21 A Yes.

22 Q And did Ernst & Young base its audit on the



1 period of October through December 2002?

2 A I believe the audit period was an earlier  
3 set of months.

4 Q Earlier set of months?

5 A Earlier than October -- I'm sorry, the  
6 months you said again?

7 Q October through December 2002.

8 A Yes. It was earlier months than that, were  
9 the months that E & Y had based their audit.

10 Q Do you know what months they used; do you  
11 recall?

12 A I would have to go back and confirm that.

13 Q Was it sometime during 2002?

14 A Yeah. I think it was the summer to fall  
15 time frame.

16 Q And Ernst & Young had been hired by SBC;  
17 correct?

18 A That is correct.

19 Q And do you know why -- given that a  
20 BearingPoint test was in progress, do you know why  
21 Ernst & Young had been hired by SBC?

22 A My recollection of the testimony that SBC

1     filed at the time, which I think explained that, was  
2     that the BearingPoint test was taking a long time due  
3     to its complexity, due to the requirements for the  
4     test to be completed. It was a pass -- or test until  
5     you pass. In other words, any failure, you had to  
6     continue testing.

7                     And so SBC commissioned Ernst & Young to  
8     conduct the performance measurement audit to provide  
9     additional evidence to the Commission in the 271  
10    proceeding.

11            Q     Could you look at Page 4 of your rebuttal  
12    testimony, please.

13            A     I'm there.

14            Q     At Lines 74 to 79, you refer to a, what you  
15    call, a compromise remedy plan that SBC-Illinois had  
16    reached agreement with TDS MetroComm; is that  
17    correct?

18            A     That's correct.

19            Q     Is that the same compromise remedy plan  
20    that you refer to at Lines 161 to 163 of your direct  
21    testimony?

22            A     Yes, it is.

1           Q     SBC-Illinois and TDS MetroComm adopted what  
2     you referred to as the compromise plan pursuant to an  
3     amendment to their interconnection agreement; is that  
4     correct?

5           A     That's my understanding how it's  
6     formalized, yes.

7           Q     And that amendment was approved by the  
8     Commission in Docket 03, dash, 0098; is that correct?

9           A     Subject to check. I don't have the docket  
10    number in front of me.

11          MR. MacBRIDE: May I approach the witness?

12          ADMINISTRATIVE LAW JUDGE SAINSOT: Yes, you  
13    may. BY MR. MacBRIDE:

14          Q     Just, hopefully, so we don't need this  
15    subject to check, Mr. Ehr, I'm going to hand you a  
16    copy of the Commission's order in Docket 03-0098.  
17    And if you could just look at it and see if that  
18    order appears to you to be the order approving the  
19    compromised remedy plan you described in your  
20    testimony.

21          A     That does appear to be the order that would  
22    have approved that amendment, yes.

1           Q     Thank you.

2                     Now, is it correct that under the  
3     agreement reached between SBC-Illinois and TDS, the  
4     01-0120 remedy plan was to be applicable to TDS  
5     MetroComm?

6           A     In certain circumstances as it specifies --  
7     as it describes in the order, yes.

8           Q     And what were those circumstances?

9           A     The circumstances were, should the -- at  
10    the time, it was known that SBC, at the time AT&T,  
11    had appealed the Commission or they filed for  
12    reconsideration then an appeal on the Commission's  
13    decision to extend the plan beyond the end of the  
14    merger agreement time frame.

15                     In working with TDS, TDS understood the  
16    risk that was out there that potentially that plan  
17    would be deemed unlawful or something similar to kind  
18    of where we're at today, and they chose to agree with  
19    SBC, at the time AT&T, that that would be their plan  
20    but there would be essentially a fall-back mechanism  
21    that if that plan was overturned, that they would  
22    have remedies under the compromise plan, and part of

1 the agreement is that there would be a true-up that  
2 was a -- if it was six months later and we'd say,  
3 what's the difference between what you would have  
4 gotten under the compromise plan and what you did  
5 under the 01-0120 plan and there would be a credit or  
6 debit scenario based on what the net amount was.

7 Q When you say "that would be their plan,"  
8 you're referring to the 01-0120 plan?

9 A Well, their agreement is that the 01-0120  
10 plan was their plan; but should it be overturned  
11 because of the pending appeals, that they would have  
12 a fall-back position for the compromise plan so that  
13 they would not end up without remedies for the period  
14 in question.

15 Q If you would look at your direct testimony,  
16 Lines 182 to 185, please.

17 A I'm there.

18 Q And here you say that during the October to  
19 December 2002 period, SBC-Illinois met the applicable  
20 standard for at least 90 percent of the measures  
21 subject to remedies that where there was sufficient  
22 data to perform an aggregate test. Is that correct?

1           A     That is correct.

2           Q     And can you explain what you mean by an  
3     aggregate test?

4           A     Aggregate test is the aggregate result for  
5     all CLECs doing business in the state, which is a  
6     measure that we report as part of the normal course  
7     of business. The result for all CLECs in the state.

8           Q     So it's based on the results for all the?

9           A     Companies, not by looking at the  
10    individual companies?

11          A     Yes. It's a performance result that's  
12    based on the level of service we provide to every  
13    CLEC in the state.

14          Q     If SBC-Illinois met or exceeded the  
15    benchmark for a particular performance measurement on  
16    an aggregate basis for a month, could it nonetheless  
17    fail to meet that benchmark for individual companies  
18    who are in that month?

19          A     It could, depending on what that aggregate  
20    performance was. For example, if aggregate  
21    performance was 100 percent, no, it couldn't. For an  
22    individual CLEC if it's less than 100 percent, it's

1       conceivable that it could.

2               Q     And the data -- the percentages that you  
3       present on Page 10 of your direct testimony are based  
4       on the aggregate results, not individual company  
5       results?

6               A     It is the aggregate result, yes.

7               Q     All right.  Going back to Lines 182 to 185,  
8       in Footnote 2 to that text, you explain what you mean  
9       by having sufficient data to perform an aggregate  
10      test; correct?

11              A     Yes.

12              Q     Can you tell me for each of the months  
13      October, November and December 2002, how many  
14      measures were subject to remedies in each month?

15              A     I could if I went and determined that.  I  
16      don't have that data available to me.

17              Q     Okay.  Can you tell me for the same three  
18      months how many of the measures that were subject to  
19      remedies had sufficient data to perform an aggregate  
20      test?

21              A     Again, the data to determine that -- the  
22      answer to that question, I don't have available to me

1     today.  It was part of the discovery response we  
2     provided, I think, in one of the CLEC requests.

3           Q     Looking again at the table on Page 10 of  
4     your testimony, in the third column of your table,  
5     you listed the Commission approved remedy plan in  
6     each of those months?

7           A     Yes.

8           Q     And my question is, is the calculation of  
9     the percent met figures for each month dependent on  
10    which remedy plan was in effect for that month?

11          A     No, it is not.  What is dependent upon is  
12    the performance measures that were in effect for that  
13    month.  There may have been some certain months where  
14    the performance measures changed as a result of the  
15    collaborative agreements with the CLECs.

16                    So you might have had a different set of  
17    measures early in this time frame as opposed to at  
18    the end of this time frame.

19          Q     Now, again, with respect to the table on  
20    Page 10, do you recall being asked in a data request  
21    by McLeod -- and this was Item 1.4 -- to provide for  
22    each month shown on this table a listing of the



1 performance measures subject to remedies for that  
2 month and whether each such measure was met, missed  
3 or lacked sufficient data to perform an aggregate  
4 test for the month?

5 A I believe we responded to that request,  
6 yes.

7 Q All right. And if you recall, in that  
8 response, you were -- or did SBC-Illinois state that  
9 it did not have the requested information available  
10 for the months of January through June 2002?

11 A I recall that there was a different source  
12 of the percentage met for that period of time and for  
13 the subsequent period, yes.

14 I don't recall specifically what our  
15 response was, but I think we confirmed that it's a  
16 different source of data for those calculations.

17 MR. MacBRIDE: May I approach the witness again?

18 ADMINISTRATIVE LAW JUDGE SAINSOT: Yes.

19 MR. MacBRIDE: And I don't need to mark this as  
20 an exhibit, but I just want to give Mr. Ehr an  
21 opportunity to verify his answer.

22

1 BY MR. MacBRIDE:

2 Q This is the narrative portion of SBC's  
3 response to McLeod's data request. If you take a  
4 minute to look at the response to 1.4.

5 A Okay.

6 Q And does it indicate to you that the  
7 response was that SBC did not have the requested  
8 information readily available to the specific request  
9 for the months of January through June 2002?

10 A Yes. It says that and describes where the  
11 data was taken from and included in my affidavit --  
12 or my testimony.

13 Q And then in response to that question or in  
14 partial response, you did provide a spreadsheet  
15 titled 01, dash, 0662, Ehr rebuttal perf, which I  
16 assume means performance chart, which you stated  
17 provides the data supporting the performance for June  
18 -- for January through June 2002; correct?

19 A That's my recollection, yes.

20 MR. MacBRIDE: Now, I have a document I'd like to  
21 have marked as McLeodUSA Cross Exhibit 1.

22

1 BY MR. MacBRIDE:

2 Q Mr. Ehr, do you have McLeodUSA No. 1 before  
3 you?

4 A Yes, I do.

5 Q And is this a document -- the spreadsheet  
6 that was referred to in the response to data request  
7 1.4 that was referred to as 01, dash, 0662, Ehr  
8 rebuttal perf chart?

9 A To be honest with you, I'm not sure.

10 Q Okay. Well, do you recognize this exhibit,  
11 this document?

12 A I have no reason to think that this is not  
13 what might have been provided to you, but I would  
14 have to review my files to confirm that this is the  
15 same thing that I was providing to our legal staff to  
16 provide to you.

17 Q Okay.

18 A It's not labeled as an AT&T or SBC document  
19 as to my concern.

20 Q All right. But your legal staff always  
21 does what you tell them to do; don't they?

22 A I'm assuming they would provide what I gave

1     them to provide in response to discovery; that is  
2     correct.

3             Q     Thank you.

4                     Can you tell me on this exhibit in the  
5     fourth column what the number "total counted"  
6     represents?

7             A     What the "total counted" would represent,  
8     as I would understand this, this chart, would be the  
9     total number of individual performance results that  
10    were -- we were able to do a determination of make or  
11    miss at the aggregate level. That was subject to  
12    either Tier 1 or Tier 2 remedies.

13            Q     Okay. And I take it the number reported in  
14    the column "number met" would be the number of those  
15    performance measures that met or exceeded the  
16    specified benchmark under the aggregate test?

17            A     That would have met the standard for the  
18    PM, whether benchmark prepared, yes, that's what my  
19    expectation would be.

20            Q     Mr. Ehr, would you agree that one function  
21    of a performance remedy plan is to provide remedy  
22    payments to CLECs in the form of liquidated damages

1     where service quality does not meet the specified  
2     benchmarks instead of requiring the CLEC to prove  
3     actual damages?

4             A     I would agree that that's AT&T's position.  
5     I would not agree that that's what the 01-0120 plan  
6     does. And that's specific to the term "liquidated  
7     damages."

8             Q     Could you explain what you mean by -- to  
9     the term "liquidated."

10            A     I believe in the 01-0120 remedy plan, the  
11     term liquidated damages is not in it. I believe that  
12     it was one of the positions of staff or the  
13     Commission decided that that language shouldn't be in  
14     that plan, if my recollection was correct.

15            Q     If I were to ask you about remedy plans  
16     generally, would you agree with that statement?

17            A     The structure of remedy payments in the  
18     remedy plans that AT&T has, it is to have them  
19     provide liquidated damages as the form of  
20     compensation to CLECs.

21            Q     And thereby avoid the need to prove actual  
22     damages?

1           A     Sure.  Yes.

2           Q     Okay.

3           MR. MacBRIDE:  Thank you.  That's all the  
4     questions I have.

5           ADMINISTRATIVE LAW JUDGE SAINSOT:  Any further  
6     cross?

7           MR. MacBRIDE:  Could I offer McLeod Exhibit 1 in  
8     evidence?

9           ADMINISTRATIVE LAW JUDGE SAINSOT:  Any  
10    objection to the admission of McLeod Cross Exhibit 1  
11    into evidence?

12          MR. METROPOULOS:  No objection, your Honor,  
13    subject to just verifying that it is, in fact, the  
14    document.  As Mr. Ehr indicated, he wasn't absolutely  
15    sure based on, you know, titles,  
16    et cetera, that it was the document that came from  
17    him.

18          ADMINISTRATIVE LAW JUDGE SAINSOT:  Well, how  
19    would you verify it?

20          MR. METROPOULOS:  We would just go back to his  
21    files and check and see if it's the same thing.

22                       We have no reason to believe that it's

1 not. I trust Owen. I'm just saying that if we go  
2 back and see that we submitted something else.

3 MR. MacBRIDE: These are all conveyed  
4 electronically, so one has to go back and look at the  
5 e-mail transmitted and see the file label --

6 MR. METROPOULOS: Correct.

7 MR. MacBRIDE: -- basically is what you have to  
8 check.

9 ADMINISTRATIVE LAW JUDGE SAINSOT: So if you  
10 have a problem then tell me on Thursday.

11 MR. METROPOULOS: Absolutely.

12 ADMINISTRATIVE LAW JUDGE SAINSOT: Okay. That  
13 being the case, your motion is granted. McLeod  
14 Exhibit 1 -- excuse me, McLeod Cross Exhibit 1 is  
15 admitted into evidence.

16 (Whereupon, McLeod Cross  
17 Exhibit No. 1 was admitted  
18 into evidence.)

19 ADMINISTRATIVE LAW JUDGE SAINSOT: Who's next.

20 MS. NAUGHTON: I am. Thank you.

21

22

1 CROSS-EXAMINATION

2 BY

3 MS. NAUGHTON:

4 Q My name is Nora Naughton and I represent  
5 the staff of the Illinois Commerce Commission.

6 I'd like to direct your attention to  
7 your rebuttal testimony, if I could.

8 A Yes.

9 Q On Line 64 through 67 of your rebuttal  
10 testimony, you indicate that the 01-0120 plan did not  
11 cause SBC-Illinois' good performance in late 2002  
12 because its performance began to improve before the  
13 01-0120 plan took effect. Is that a fair  
14 characterization of your position?

15 A That's what my testimony says. Yes, that's  
16 a fair characterization.

17 Q Isn't it possible that the knowledge that  
18 the 01-0120 plan was about to be implemented may have  
19 spurred SBC-Illinois to improve its performance?

20 A No.

21 Q Isn't it true that SBC had made some claims  
22 after the 01-0120 plan was in effect that it caused



1 high remedies to be paid?

2 A I think part of the testimony in the  
3 01-0120 proceeding identified in advance to the order  
4 that it would cause double to triple amount of  
5 remedies otherwise.

6 Q So you don't believe that paying double or  
7 triple the remedies would get SBC's attention?

8 A No. What you had asked me was, if I can  
9 paraphrase it back, was: Did the fact that the  
10 remedy plan was there drive SBC to do something  
11 different in performance.

12 Q Yes.

13 A And my answer to that was "no."

14 Q Because -- and I guess I'm trying to  
15 understand that because it would seem as a profit  
16 company, a company in the business of making profit,  
17 that you would want to make sure you didn't have to  
18 pay double or triple the damages?

19 A Well, I think what you're not recognizing  
20 is the complexity of having the number of technicians  
21 in the field, the number of central offices, the  
22 number of people receiving orders, processing CLEC

1 orders, processing at the same time our retail  
2 orders, we can't go and say, You guys all have to do  
3 your jobs differently and get to every one of those  
4 people because of this remedy plan that we might pay  
5 money on based on performance.

6 Q So it's your position then that monetary  
7 damages don't provide an incentive?

8 A No, I did not say that. I've not testified  
9 to that.

10 Q But that the 01-0120 monetary damages did  
11 not provide incentive?

12 A What I've testified to is that in response  
13 to your question --

14 Q Yeah.

15 A -- you said that the existence of the  
16 01-0120 plan in and of itself did not drive SBC to  
17 have performance one way or the other for those  
18 months.

19 Q Let me see if I understand this. You seem  
20 to be acknowledging that paying double or triple  
21 remedies would provide some incentive to a company  
22 that is intending to make profit.

1           A     Yes.

2           Q     But that the -- the fact that the 01-0120  
3     plan was going to be implemented and the company had  
4     a good deal of time, frankly, before that was  
5     implemented to understand the impact that it might  
6     have, that wouldn't be enough to start you to look at  
7     your performance and start developing some -- you  
8     know, looking at these areas where you were having  
9     trouble and trying to correct them so you wouldn't  
10    have to pay these remedies in the near future. I  
11    mean, I just want to know. Yes or no?

12          A     Well, it's not as simple as yes or no. The  
13    time period in effect here, the issue of the remedy  
14    plan was one of many issues that was going on that we  
15    were dealing with. That was not the issue that our  
16    management teams, let's say, in network, were focused  
17    on.

18                   At a -- in my organization in -- you  
19    know, for senior management, of course, that's  
20    something that people were aware of. They understood  
21    if performance declined, it would be more remedies.  
22    If performance improved, it would be more remedies.

1                   But it wasn't something that people took  
2   down to the individual lowest levels of the people  
3   actually executing, you know, on a day-to-day basis  
4   and said, You have to do this because of this remedy  
5   plan.

6                   So there's recognition, and there's the  
7   desire to perform well as we were performing, and  
8   there's always the desire to improve on performance  
9   that's not meeting standards or not meeting customer  
10  expectations.

11                  But to say that -- I can't say that the  
12  0120 remedy plan was the thing -- was taken down and  
13  was a driver that we dealt with with the people who  
14  to do the day-to-day work.  No.

15                Q   And is that based because you don't have  
16  the knowledge, or are you saying this is -- I guess  
17  I'm confused.

18                  Are you saying you're not really sure  
19  that this actually got down to the people?

20                A   No.  No.  What I'm saying is that there  
21  weren't -- you know, in my job, I'm involved in  
22  working all the way out to the people that are in the

1 operational organizations --

2 Q Uh-huh.

3 A -- to work with them, to make sure that  
4 they understand at the management levels the impact.

5 Now, they know. They're aware. They  
6 monitor the work. They monitor what's going on in  
7 their business. We didn't go and change processes.  
8 We didn't go and, you know, increase staff or we  
9 didn't go and reroute people specifically for the  
10 purposes of changing remedy payments.

11 We did those things for the 271  
12 proceeding, to help -- because, you know, as  
13 BearingPoint -- we talked earlier, BearingPoint finds  
14 an issue. We've got to fix it. We're making changes  
15 for that to improve service. We're making changes  
16 from a normal course of business to improve service  
17 or change service, you know, address  
18 issues.

19 It isn't the remedy plan that was being  
20 taken down and driving those changes at that time.

21 Q Okay. I'll have to accept that.

22 Looking to Line 82 to 83 of your

1     rebuttal testimony, you indicate that SBC-Illinois  
2     continued making remedy payments to those CLECs under  
3     the original plan. And by original plan, I presume  
4     you mean the Texas remedy plan originally implemented  
5     Condition 30?

6           A     It was the plan that was implement by  
7     Condition 30 that's generically referenced as the  
8     plan. That was one of the two plans that would have  
9     been in effect, yes.

10          Q     So, just to be clear, SBC-Illinois  
11     continued to make remedy payments to the CLECs  
12     entitled to the remedies under 0120 plan as well?

13          A     CLECs who took the actions to --

14          Q     Yeah. Entitled. Entitled. They exercised  
15     their option.

16          A     We made payments to them, as the Commission  
17     directed us to. CLECs who didn't take that  
18     action --

19          Q     I understand those who weren't entitled to  
20     you didn't pay. But I'm just saying, those who were  
21     entitled to the 0120 plan, you paid during that time  
22     frame?

1           A     I guess I get to the question you had here,  
2     we paid all CLECs who were on a remedy plan based on  
3     the remedy plan they were on and based on the service  
4     that we provided to them.

5           Q     That's all wanted to be clear, is that you  
6     were also paying payments under the 0120 plan.

7           A     Yes, as we were required by the Commission.

8           Q     That's all I needed. Thank you.

9           A     Thank you.

10          Q     Okay. In your response to Question 8 of  
11     your rebuttal.

12          A     Yes.

13          Q     You indicate that SBC-Illinois is not  
14     proposing, not proposing, that the Commission adopt  
15     either plan, the compromised plan or the original  
16     plan for the October through December 2002 period; is  
17     that correct?

18          A     That is correct.

19          Q     Is SBC-Illinois proposing any plan for that  
20     period to those CLECs that had been taking under the  
21     0120 plan?

22          A     I don't believe so, no. The time for them

1 to have done something to have --

2 Q That's fine. I wanted --

3 A -- under that plan was at that time.

4 Q Also, in your response to that same  
5 question, Question 8 of your rebuttal, you indicate  
6 that you're willing to negotiate with individual  
7 CLECs but don't believe it would be appropriate to  
8 agree to any remedy plan to cover the gap period; is  
9 that correct?

10 A That's correct.

11 Q So what are you negotiating?

12 A We're willing to negotiate -- well, I  
13 guess --

14 Q You're not --

15 A I'm uncomfortable. I think the issue here  
16 is different than -- I mean, if the CLEC wanted to  
17 say, I'd like to have remedy plan X in effect for  
18 those months, we'd talk to them. We'd negotiate on  
19 it.

20 You know, I don't know that we would --  
21 you know, I'm just -- what this says is what it says.  
22 We don't believe it's appropriate to go back and



1 change past history.

2 Q I understand your testimony. Because you  
3 say you're negotiating something, but you're not  
4 negotiating a remedy plan.

5 So what could you be negotiating with  
6 these CLECs? You're saying -- you're suggesting that  
7 you're doing that and that you're going --

8 A And that --

9 Q Is that some sort of an offer, I suppose,  
10 that's open --

11 A What it says is we're willing --

12 Q Would it --

13 A What it says is we're willing to negotiate  
14 with individual CLECs, and clearly what it says, we  
15 do not believe it would be appropriate.

16 So, I mean, if a CLEC -- if there was  
17 something on the table that made sense and there was  
18 something that on an individual basis -- I don't  
19 know. It depends on what would happen. Depended on  
20 what the offers are. Depended on what the discussion  
21 is. I can't speculate.

22 Q So there's really nothing on the table,

1     that I'm hearing; right?

2             A     I don't think my testimony says that  
3     there's any offer on the table. We'd be interested  
4     in hearing CLECs who would always like to settle  
5     issues. We'd be interested --

6             Q     I'm just trying to clarify. You say you're  
7     willing to negotiate with the CLECs. That's  
8     theoretical. There's nothing on the table. You  
9     haven't negotiated anything and you're not willing to  
10    negotiate a remedy plan?

11            A     I didn't say we're not willing to negotiate  
12    a remedy plan. That's not what my testimony --

13            Q     Well, you say that you do not believe it  
14    would be appropriate for any remedy plan.

15            A     That's correct.

16            Q     Okay. That's all I wanted to know.

17                   I also just wanted to make sure that I  
18    understand SBC-Illinois' role in implementing the  
19    remedy plan.

20                   It's correct, isn't it, that the company  
21    is the one who determines if they missed a  
22    performance measurement -- performance standard?

1           A     Yes.

2           Q     And that you also calculate the remedies  
3     based upon the terms and conditions of the remedy  
4     plan?

5           A     Based upon -- we calculate performance  
6     based on the performance measures themselves and  
7     based on the statistics in the plan, and we calculate  
8     remedies based on the provisions in the plan to pay  
9     remedies; that's correct.

10          Q     You rephrased my question, but you are  
11     answering, yes, basically?

12          A     Yeah.

13          Q     Okay. And that you also report those  
14     results to the Commission?

15          A     Yes.

16          Q     Probably to CLECs as well?

17          A     Yes.

18          Q     So when you're responding in your  
19     Questions 9 through 12 of your rebuttal, you're  
20     responding to a number of issues, but is it fair to  
21     say that you're not saying that SBC-Illinois has  
22     badly calculated any of the performance measures or

1     was incorrect in making the determinations that they  
2     reported to the Commission; isn't that correct?

3             A     I would have to review my testimony because  
4     I think on at least one occasion I talk about the  
5     fact that at the time there was one performance  
6     measurement that we determined later that there was  
7     an issue with the way it was being calculated that we  
8     were underreporting our performance.

9                     But I'm not aware of any situation for  
10    those performance measurements that we were reporting  
11    performance that was better than actually delivered.  
12    I don't recall that.

13            Q     Okay. So basically, though, I think we can  
14    rely on the fact that you've made these annual  
15    reports and unless there was subsequently corrected,  
16    you are the one who has the data, calculated the  
17    remedy payments and made the determinations as to  
18    whether or not you failed?

19            A     Yes.

20            Q     And that you're standing by those numbers?

21            A     Yes.

22            Q     Okay. I want to turn your attention to

1 Question 14.

2 A In the rebuttal still?

3 Q Still in the rebuttal. Yeah. I'm only  
4 interested in the rebuttal.

5 Now, I think you touched on this already  
6 in previous testimony; but just to be  
7 clear -- I want to make sure I understand your  
8 testimony. You make some statements that Mr. Dvorak  
9 didn't provide any evidence or calculation of losses  
10 by Cimco?

11 A That's what it says, yes.

12 Q And to make sure I understand, I wanted to  
13 ask you if you were aware that the 0120 remedy plan  
14 didn't require CLECs to demonstrate or calculate  
15 losses in order to receive remedy plans?

16 A Oh, I'm aware of the structure of the  
17 remedy plans in that they're designed so that CLECs  
18 do not have to demonstrate any actual loss to receive  
19 those payments.

20 What I was responding here was to  
21 Mr. Dvorak's assertions in his testimony, not as to  
22 what we were required to do in our remedy plan.

1           Q     Okay.  And I thought I heard you say  
2     something in the previous testimony that at least  
3     implied and perhaps you are not certain that these  
4     payments that are paid are compensatory in nature or  
5     could be considered.  I think you objected to the  
6     term "liquidated damages," which I know staff was  
7     concerned about as well; is that correct?

8           A     I believe what I did is I referred back to  
9     the language of the plan, which I don't think uses  
10    "liquidated damages."

11          Q     I agree.  But I do want to read a sentence  
12    of the remedy plan to you so that we know we're all  
13    on the same page.

14          A     Okay.

15          Q     It says in Section 6.1 of the plan, By  
16    incorporating these terms regarding payment into an  
17    interconnection agreement, Ameritech and CLEC agree  
18    that proof of damages from any noncompliant  
19    performance measure would be difficult to ascertain;  
20    and, therefore, the payments made pursuant to the  
21    plan are a reasonable approximation of any  
22    contractual damage resulting from a noncompliant

1 performance measure.

2 MR. METROPOULOS: Excuse me, if you're reading  
3 from a document, could you just show him a copy.

4 MS. NAUGHTON: I certainly could.

5 MR. METROPOULOS: Thank you.

6 BY MS. NAUGHTON:

7 Q This is the exhibit attached to the 0120  
8 order. It's the modified plan. This is the sentence  
9 I'm referring to.

10 A Uh-huh.

11 Okay.

12 Q So while maybe the "liquidated damage" term  
13 may be a misnomer, it certainly seems clear from this  
14 statement that this is still and intended to be an  
15 approximation of damages; would you agree?

16 A My understanding is, is the payments are  
17 compensation, yes, for approximation of damages that  
18 may occur -- or may have occurred as a result of the  
19 service delivered.

20 Q Thank you.

21 MS. NAUGHTON: Give me a minute.

22 That's all I believe I have. Thank you.

1 ADMINISTRATIVE LAW JUDGE SAINSOT: Anybody  
2 else?

3 MR. ROWLAND: Yes.

4 CROSS-EXAMINATION

5 BY

6 MR. ROWLAND:

7 Q Good afternoon, sir. My name is Tom  
8 Rowland. I represent Cimco Communication and Forte  
9 Communication.

10 Could you turn your direct testimony  
11 please, the table on Page 10.

12 A Yes.

13 Q And I think you testified earlier that  
14 while we're talking about particular months in 2002,  
15 you present on this table data for all of 2002 and  
16 all of 2003; correct?

17 A That is correct.

18 Q In terms of percentage met; is that  
19 correct?

20 A That is correct.

21 Q And back to what you said a few minutes ago  
22 in relation to your footnote on Page 2 about the CLEC



1     aggregate test, this is percentage -- these  
2     percentages are based on SBC's analysis; correct?  
3     This is your test?

4             A     Yeah. This is the obligation we have to  
5     report performance measures. This is the result of  
6     that obligation and the result of those measures.

7             Q     Okay. And would you agree with me that  
8     looking at particular months, you were below the 90  
9     percent level, for instance, for January 2002?

10            A     Yes, there's variants from month to month  
11    above and below the 90 percent level.

12            Q     And, for instance, on March of 2002, it's  
13    below 90 percent; correct?

14            A     Yes, it is.

15            Q     And we could go through all of these; but,  
16    basically, take a look at your table. There's nine  
17    months in this table where you're below 90 percent;  
18    correct?

19            A     Yes.

20            Q     Okay. And something else about the way the  
21    data is presented. You've got January through  
22    December of '03 and up through June, obviously, there

1     was a plan in effect.  It's the same plan, the  
2     01-0120 plan.  It may have been subject to a  
3     different ICC order but it was in effect during that  
4     time frame as well; correct?

5             A     That is my understanding.

6             Q     And isn't it true that when you paid out  
7     remedies, say you paid out some remedies in October  
8     or November of 2002, if a CLEC had the 0120 plan and  
9     then continued to have it into 2003, if you had  
10    performance problems, say, on FOC returns -- that's  
11    F-O-C -- FOC returns with a particular CLEC, it's  
12    possible that under the plan the amount of remedies  
13    would increase, would get stepped up; isn't that  
14    true?

15            A     One function of the plan is that if you  
16    miss a measure in multiple months, consecutive  
17    months, that the amount per month -- per occurrence  
18    or per month depending on the PM does increase, yes.

19            Q     We can talk about this in more in detail if  
20    you want, but let me just sort of cut to the chase.  
21    If, in fact, that's the case and there were, you  
22    know, performance measures that were not met in these

1 first three months and whatever you pay CLEC X during  
2 that time, it's quite possible that through the  
3 period January '03 through June '03, you would have  
4 paid a lot more in remedies for those months for that  
5 same CLEC assuming you had the same performance  
6 measure of failures?

7 A So I can make sure I understand your  
8 question, I'll try and --

9 Q It's not a convoluted question.

10 A -- phrase it back to you.

11 If there were misses in, for example,  
12 October, November, and December, consecutive months  
13 misses for the same PM, we would have escalation in  
14 the amounts paid.

15 If those misses continue into January,  
16 February, March, they continue to escalate up to a  
17 six months -- six consecutive month level and then  
18 they would be at the same level every month going  
19 forward until such time as the measure was then met  
20 in a subsequent month, yes.

21 Q Okay. Could you turn to your reply  
22 testimony, please.

1           A     I'm there.

2           Q     And you're responding there to testimony  
3     filed by Cimco. In particular, you're talking about  
4     certain performance measures, billing accuracy,  
5     billing completeness and mechanized provisioning  
6     accuracy; is that correct?

7           A     That is correct.

8           Q     And those performance measures are PMs 14,  
9     17 and 12 respectively?

10          A     Yes.

11          Q     In terms of what is presented in  
12     Mr. Dvorak's testimony, the types of issues that are  
13     effecting or effected certain CLECs back in this time  
14     frame, 2002 -- first of all, the different  
15     performance measures might have effected different  
16     CLECs in different ways based upon the business plan;  
17     correct?

18          A     The performance that we delivered to CLECs  
19     would vary just naturally. It's not going to be the  
20     same for everybody, and there could have been  
21     different performance measured missed for individual  
22     CLECs. I couldn't -- my understanding when you speak

1 of a CLEC's business plan is, typically, that they  
2 order different kinds of products from us and so if  
3 we perform really well on one type of product across  
4 the industry, lower on another product across the  
5 industry, that CLECs who were ordering the one  
6 product perhaps were having a better experience than  
7 CLECs that were ordering the other product. If  
8 that's what you mean by different business plan --

9 Q Right.

10 A -- I would agree there's undoubtedly  
11 variation between the products between CLECs.

12 Q All right. Okay. That's fair. Thank you.

13 With respect to what's highlighted in  
14 these particular measures, and we could probably talk  
15 about many measures, but we're talking about these  
16 particular three here in your testimony on Page 5  
17 going over into Page 6.

18 Isn't it true that what's important to,  
19 in this case, Cimco might be reflected in what's  
20 actually paid out to Cimco in those three months;  
21 isn't that true?

22 A In regard to those measures?

1 Q Yes.

2 A It couldn't be.

3 Q Excuse me?

4 A It could not be.

5 Q It could not be.

6 Mr. Ehr, let me have you go look at a

7 particular item. You're familiar with Mr. Dvorak's

8 testimony?

9 A I've reviewed it and responded to it.

10 Q And do you have Schedule 1 there with you?

11 A Not to Mr. Dvorak's, no.

12 Q Prior to reviewing Mr. Dvorak's testimony,

13 did you look at individual CLEC performance data in

14 preparation for this case?

15 A Prior to reviewing his testimony?

16 Q Yes.

17 A No, I did not look at individual CLEC data

18 prior to his testimony.

19 MR. ROWLAND: May I approach the witness?

20 ADMINISTRATIVE LAW JUDGE SAINSOT: Yes.

21 MR. ROWLAND: This is already an exhibit

22 schedule in --

1           ADMINISTRATIVE LAW JUDGE SAINSOT: Right. In  
2 Mr. Dvorak's testimony.

3 BY MR. ROWLAND:

4           Q Sir, I'm handing you what's been marked --  
5 or is in the case as Schedule 1. It's a confidential  
6 document. We don't necessarily need to talk about  
7 actual amounts, but we can talk about parameters.

8                       It purports to be a document actually  
9 generated by SBC. It was given to the CLECs  
10 individually. Each one is individually marked. And  
11 it shows the prorated amounts and interest paid and  
12 total due for the three months periods, October '02  
13 through December '02.

14          A Yes.

15          Q So, Mr. Ehr, you've seen this before;  
16 correct?

17          A Yes, I have.

18          Q Let me direct you to a particular  
19 reference. And I think Cimco also provided this to  
20 you in response to data requests.

21          A Yes.

22          Q Could you look at -- and, again, this

1 actually provides a performance measure for Cimco.

2 It provides performance measures by month; correct?

3 A That is correct.

4 Q And let me be clear. Of failed performance  
5 measures per month?

6 A Yes. It identifies performance measures  
7 that we paid remedies to Cimco on.

8 Q Okay. If you look at November for -- just  
9 an for example, Performance Measure 17, which I think  
10 we were talking about is billing completeness;  
11 correct?

12 A Yes. Performance Measure 17 is titled  
13 billing completeness.

14 Q Okay. And without going into the --  
15 actually saying the number, the number -- the amount  
16 that was paid for that measure indicates -- first of  
17 all, it's a large number; correct?

18 A Yes, it is.

19 Q Relative speaking in terms of performance  
20 measures on this table, it's a large number?

21 A Yes. It's evidence of an individual  
22 measure that was missed multiple months. That's why



1 the number is large.

2 Q It's not making the grade, obviously;  
3 right?

4 A It's not making the standard that was  
5 established --

6 Q In '01.

7 A -- in the process that's -- there's a  
8 difference between what was reported and what was the  
9 actual impact of that performance.

10 Q Right.

11 Okay. And if you look at, again, for  
12 the same measure in December in 2002, again, there's  
13 a rather large payment, remedy payment; correct?

14 A Yes.

15 Q Okay. So back to your statements about  
16 Mr. Dvorak's testimony, what he raises in his  
17 testimony might reflect what's important to Cimco;  
18 correct?

19 A In response to -- my earlier response to  
20 this question --

21 Q No. Can you just answer my question now.

22 Is it reasonable to assume that

1 Mr. Dvorak is putting in his testimony some reference  
2 to a measure that may be important to Cimco? Yes or  
3 no?

4 A That's reasonable, yes.

5 Q Thank you.

6 Now, with respect to something you say  
7 about billing accuracy, first of all, billing  
8 accuracy whether this measure captures it or not,  
9 billing accuracy is important to a CLEC; is that  
10 true?

11 A You'd have to ask the CLEC. It's important  
12 to SBC that we deliver -- or AT&T that we deliver  
13 accurate bills, yes.

14 Q So we can assume it's probably important to  
15 other carriers as well?

16 A I would assume so. I would agree with you  
17 there.

18 Q Okay. With respect to -- it's on Page 5  
19 here.

20 Actually, it's on Page 6.

21 Approximately, the answer that's contained in Line  
22 123 and 124, the further answer to all of that. And

1     what I'd like you to do is compare what Mr. Dvorak  
2     says in his testimony. Could you turn to his reply  
3     testimony.

4             A     I don't have his reply testimony.

5             Q     I will give it to you.

6                     And I misspoke. It's actually a  
7     reference to his direct testimony.

8                     Now referring you to Lines 65 to 68 of  
9     Mr. Dvorak's testimony.

10            ADMINISTRATIVE LAW JUDGE SAINSOT: Are you  
11     saying Mr. Dvorak has reply testimony?

12            MR. ROWLAND: Yes, he does.

13            ADMINISTRATIVE LAW JUDGE SAINSOT: Okay.

14            THE WITNESS: Which lines again?

15     BY MR. ROWLAND:

16            Q     Excuse me?

17            A     Which lines again?

18            Q     Approximately 65 to 68.

19                     Do you see that?

20            A     I see that.

21            Q     Okay. Isn't true that Mr. Dvorak says that  
22     Cimco had to devote accounting time to audit numerous

1        billing issues that arose; isn't that true?

2            A        That is what it says, yes.

3            Q        Thank you.

4                      Now, Mr. Ehr, earlier in response to Mr.  
5        MacBride's questions you indicated some of your  
6        duties of your particular department. Do you  
7        participate in conference calls with CLECs or did you  
8        at this time in 2002 or 2003 when they were trying to  
9        work out operational problems?

10            A        My position as performance measurement, I  
11        participated in various face-to-face meetings,  
12        conference calls on performance measurement and  
13        remedy plan issues, not on operational issues.

14            Q        Okay. So you weren't part of any  
15        conference calls with Cimco in 2002 or 2003; correct?

16            A        Other than to the fact that Cimco may have  
17        been participating in collaborative that AT&T had  
18        with CLECs at the time, no, I wouldn't have been. I  
19        don't recall being in any specific Cimco calls.

20            Q        So you have no way of knowing what it was  
21        this Cimco in particular went through in terms of  
22        operational issues, system issues, processing issues?

1           A     Other than reviewing the responses to  
2     discovery, no.

3           Q     And the same would go for Forte, you were  
4     not, obviously, on any calls with Forte?

5           A     I would have to think back and review, but  
6     I don't recall any specific operational calls that I  
7     was on with Forte.

8           Q     As part of developing performance measures  
9     in your shop, when those are formulated and are  
10    formulated, they become something that is publicly  
11    accessible, it's up on your Web site, SBC's --  
12    AT&T's Web site; correct?

13          A     It's accessible to CLECs who have taken the  
14    effort to get a password, a user ID and password.  
15    It's not generally publicly available.

16          Q     And it's also incorporated or a part of the  
17    CLEC users guide?

18          A     When you say CLEC user guide, are you  
19    referring to the supporting documentation on CLECs  
20    on-line?

21          Q     Yes.

22          A     The CLEC on-line Web site contains a lot of

1 information including the user guide. My  
2 understanding of the remedy plan and the performance  
3 measurements, is it's documented in a separate area  
4 of the Web site. It may be referenced in a CLEC user  
5 guide, but the actual remedy plan, the performance  
6 results, the performance measurement are in a  
7 separate section.

8 Q Well, isn't it true -- and the reason I  
9 think I know this is because I think I've been on  
10 e-mail lists that were used. You've sent out  
11 documents, but there, in fact, is a user guide that  
12 includes documentation as part of the user guide that  
13 has some detail about performance measures?

14 A Okay. You referred to the CLEC user guide.  
15 I think you're really referring to the -- at the  
16 time, they were still officially labeled as SBC  
17 Midwest Performance Measurements user guide.

18 Q Okay. Thank you.

19 A If that's the document you're talking  
20 about, yes, I have a responsibility to main that  
21 document.

22 Q And you don't happen to have copy of your

1 user guide with you?

2 A I do not.

3 MR. ROWLAND: May I approach the witness?

4 ADMINISTRATIVE LAW JUDGE SAINSOT: Yes, you

5 may.

6 BY MR. ROWLAND:

7 Q Mr. Ehr, I'm handing you what is a document  
8 from the performance measurement user guide. It  
9 actually is one particular measure that's been  
10 discussed, and that's mechanized provision and  
11 accuracy.

12 A Yes.

13 MR. METROPOULOS: May I have a copy also?

14 Thank you.

15 BY MR. ROWLAND:

16 Q Now, there's a box there. It says business  
17 rule; is that correct?

18 A That's correct.

19 Q And for all of our edification, business  
20 rule is basically an SBC business rule?

21 A It's the business rule that the CLECs and  
22 SBC have agreed upon.

1           Q     Okay.  Could you read what it says there in  
2     the business rule for the record.

3           A     This measurement compares the USOCs,  
4     U-S-O-C-s, order -- on a mechanized order to the copy  
5     of the order which updates the customer billing  
6     database.

7           Q     Okay.  And that was in effect in 2002 and  
8     2003, as far as you know?

9           A     Yes.

10          Q     And for clarification or for the record,  
11     USOC is what?

12          A     USOCs stands for, if I recall it correctly,  
13     a Universal Service Order Code.  So it's a code that  
14     is placed on service orders that SBC gener- -- AT&T  
15     generates to distribute to its downstream systems so  
16     that it can provision the service.

17          Q     And the idea -- the fact that it references  
18     mechanized order, the idea of this is it's supposed  
19     to be electronic; correct?

20          A     Yeah, the idea is it's a mechanized process  
21     that generates those USOCs and puts them on the  
22     order.



1           Q     Okay.  And 2002 or 2003, was there a  
2     replacement for this measure?

3           A     A replacement?

4           Q     Yes.

5           A     I think we've already talked earlier, this  
6     measure was in effect at that time.

7           Q     Okay.  And so for 2003, it was still in  
8     effect, as far as you know?

9           A     I believe this measure was in effect for  
10    the 2002 through current time frame.

11          Q     Okay.  Let's take a hypothetical.  Let's  
12    say that this particular measure upon the agreement  
13    of SBC and the CLECs, let's say it was replaced with,  
14    as you referred to some of your other testimony,  
15    better measures or more accurate measures.  Okay?  
16    Let's just assume that.

17          A     Okay.

18          Q     Would you agree -- would AT&T agree to  
19    retroactively apply that new performance measure to  
20    any remedy payments that occurred back in 2002?

21          A     I mean, in response to the hypothetical, I  
22    don't think we've ever been presented with that.  I

1 don't know of any reason why we would agree to  
2 retroactively apply performance measure.

3 Q That's fine. Thank you.

4 And with respect to what occurred, you  
5 know, also on your chart on Page 10 of your direct  
6 testimony, what occurred in July 2003 to the end of  
7 2003, the Section 271 plan you've already spoken to  
8 that earlier today, but would it be fair to say that  
9 SBC had a hand in writing that plan?

10 A Just to make sure, which plan?

11 Q 271 plan.

12 A Yes.

13 Q All right. And just so we're clear, I'm  
14 referring to what's on your chart on your direct  
15 testimony.

16 A Yeah. The Section 271 plan is the plan  
17 that we proposed in the 271 docket. So we were the  
18 author of that plan.

19 Q And you wrote it -- and when I say "you  
20 wrote it," the company had a hand in writing it.  
21 You also had a hand in writing it?

22 A Yes, I did.

1           Q     Some of my other questions have already  
2     been asked and asked, so I'll skip through here.

3           ADMINISTRATIVE LAW JUDGE SAINSOT:    Would you  
4     like to take a quick break?

5           MR. ROWLAND:   Excuse me?

6           ADMINISTRATIVE LAW JUDGE SAINSOT:    Would you  
7     like to take a quick break?

8           MR. ROWLAND:   If anybody wants to take a break,  
9     that's fine.

10          ADMINISTRATIVE LAW JUDGE SAINSOT:    I don't know  
11     how long that's going to take.

12          MR. ROWLAND:   I have a number of more  
13     questions.

14          ADMINISTRATIVE LAW JUDGE SAINSOT:    Oh, that's  
15     fine. I just that it would give you a chance to  
16     review if we left for five minutes.

17          MR. ROWLAND:   No. I'm going to continue this.

18          ADMINISTRATIVE LAW JUDGE SAINSOT:    Okay.

19          MR. ROWLAND:   Thank you.

20                        Yes, actually, a break would be an  
21     excellent idea.

22

1           ADMINISTRATIVE LAW JUDGE SAINOT: Just a  
2 five-minute break.

3                               (Whereupon, a brief  
4 recess was taken.)

5 BY MR. ROWLAND:

6           Q     Mr. Ehr, can you turn to Page 7 of your  
7 rebuttal testimony, please.

8           A     I'm there.

9           Q     On Line 139, you talk about "correct  
10 identifiers." I don't really want to dwell on this;  
11 but in terms of identifier, what do you mean by the  
12 word "identifier"?

13                           Are you referring to a software term?

14           A     By identifiers, I'm talking about the  
15 values of specific fields like we talked earlier  
16 about Universal Service Order Codes and other types  
17 of fields. The identifier, the value that should  
18 have been in that field on an order may not have been  
19 correct.

20           Q     Okay. That's fine. It's just a  
21 clarification.

22                           Could you turn to Page 17 of your

1 testimony?

2 A Direct?

3 Q No, no. Reply. I'm sorry.

4 It continues from the previous page.

5 ADMINISTRATIVE LAW JUDGE SAINSOT: Sorry about  
6 that. I'll be back in a second.

7 MR. ROWLAND: Hold that thought.

8 (Whereupon, a brief  
9 recess was taken.)

10 ADMINISTRATIVE LAW JUDGE SAINSOT: Continue.

11 BY MR. ROWLAND:

12 Q Mr. Ehr, I directed you to Page 17 in your  
13 rebuttal testimony. And you've been waiting with  
14 abated breath to what the question was.

15 A Yes.

16 Q You say in Lines 358 through 359, There is  
17 no plan that can be put in place retroactively that  
18 will change the historic performance of SBC-Illinois.  
19 Correct?

20 A That is what it says, yes.

21 Q And you're not referring to that as a  
22 standard in any ICC order; are you? That's just your

1 opinion?

2           A     I guess it's plain fact in my assessment  
3 because performance has already been delivered that  
4 there's not going to be -- we can't change what's  
5 already happened. And so if something were tried to  
6 be done retroactively, it change performance.  
7 Performance is what it is.

8           Q     And, similarly, you know, when I was asking  
9 you about particular measures whether it was  
10 Performance Measure 12 or Performance Measure 17,  
11 those were the performance measures in effect in  
12 2002; correct?

13           A     The performance measures were in effect at  
14 the time and the performance results were what we  
15 reported based on the implementation of those  
16 measures at that time.

17           Q     Actually, I meant to ask you this earlier.  
18 The actual payments of remedies occurred after that  
19 period actually occurred in March, I think, of 2003?

20           A     I think in the Cimco case the payments were  
21 in March because of the timing it took to get the  
22 notice in and there's some -- I'd have to research

1 the details, but it was all paid in March for those  
2 months, for Cimco, with interest.

3 Q And I think that was the way for Forte as  
4 well but maybe. . .

5 A Okay.

6 Q Can you turn to Line 142 in your testimony,  
7 please.

8 ADMINISTRATIVE LAW JUDGE SAINSOT: Is this his  
9 redirect?

10 MR. ROWLAND: Reply testimony. Thank you.

11 THE WITNESS: Okay.

12 BY MR. ROWLAND:

13 Q And you refer to Performance Measure 35,  
14 Percent Trouble Reports within 30 days?

15 A Yes.

16 Q Now Mr. Dvorak didn't bring that up in his  
17 testimony; did he?

18 A I don't believe he did, no.

19 Q And, in fact, there's lot of measures that  
20 we can talk about in terms of performance. There's  
21 literally dozens of performance measures and failed  
22 performance measure we can talk about in relation to

1 particular companies, like Cimco; correct?

2 A Yeah, there's a lot of performance  
3 measures. My testimony there was specifically on the  
4 issue of provisioning accuracy.

5 Q Thank you.

6 And then -- I don't want you to go --  
7 state a number because it's a confidential number,  
8 but the number you have there on Line 148, Cimco  
9 didn't give that number to you; did it?

10 A No. That's the number that we reported in  
11 our performance results for Cimco.

12 Q In relation to PM 35; correct?

13 A That's correct. That's the reported  
14 results.

15 Q With respect to the number that you report  
16 on that line, do you know what the order number would  
17 be? I don't want you to say it out loud, but do you  
18 know what it would be for October, November,  
19 December?

20 A I don't have it, the data in front of me.  
21 I'd only speculate to what it would be based on a  
22 percentage of that number.



1 Q And you don't provide it in your testimony?

2 A I don't. I think I was responding here to  
3 the -- my expectations. I'm responding to the months  
4 that Mr. Dvorak discussed in his testimony.

5 Q Okay. With respect to -- in your  
6 testimony, I think in it's your rebuttal testimony.  
7 I'm not exactly sure what line, but I think you  
8 offered a suggestion that, if CLECs were  
9 dissatisfied, they'd filed complaints; isn't that  
10 true, generally, what you say?

11 A Yes.

12 Q In saying that -- and I don't mean to be  
13 flippant at all -- you're not encouraging litigation  
14 of parties' issues?

15 A Of course not. We don't want to have to go  
16 through all the effort and time, and that's why we  
17 think that a remedy plan like we have today, which is  
18 something that we voluntarily agreed to appropriate  
19 to, is appropriate, to avoid all those expenses for  
20 both parties.

21 Q Thank you.

22 Looking back to 2002/2003, in fact as a

1 result of performance measure assessment, however you  
2 want to define it, SBC did change different systems  
3 and processes to provide service to CLECs; correct?

4 A I'm not aware of any specific changes that  
5 we made to systems and processes that was driven by  
6 performance measurement results.

7 I believe the changes that were going on  
8 at that time, number one, particularly the 2002 time  
9 frame, were driven by the two-seventy -- the  
10 BearingPoint test by the audits that were --

11 Q Well, let me stop you right there.

12 Part of that, you know, the  
13 BearingPoint analysis, they were hearing from CLECs;  
14 correct?

15 A I understand that CLECs were providing  
16 input or were able to understand what was going on --

17 Q And to the extent that a CLEC was screaming  
18 about some issue, FOC return or whatever it was, that  
19 would have been taken into considerate, the design  
20 performance measure?

21 A I believe the most important ways that CLEC  
22 input is through the CLEC forum, which was in effect

1 at that time and continued to be in effect, which is  
2 where CLECs can bring any of their operational  
3 concerns to SBC. And we look at them and prioritize  
4 them and deal with the things as appropriate for the  
5 industry as a whole.

6 Typically, individual CLEC issues are  
7 dealt with on a business-to-business basis, you know,  
8 with the account management team. They work the  
9 issues as they're deemed appropriate.

10 Q Don't you think it's fair that to the  
11 extent that through business-to-business conferences  
12 or discussions that systems would have improved?

13 A There's the possibility; but, typically,  
14 these are systems that are serving hundreds of CLECs,  
15 you know, 160 or so, I think, is what we had active  
16 in Illinois at the time.

17 Typically, we don't go and change a  
18 process or a system to satisfied one individual CLEC.  
19 If it's something of interest, we have systems that  
20 are documented and defined; and if a CLEC has  
21 concerns about the service they're getting, we go  
22 through that issue. We work them on a

1 business-to-business basis. If that's something that  
2 then needs to be elevated to a system or process  
3 change that effects all CLECs, it goes to the CLEC  
4 user forum, is my understanding.

5 Q Are you familiar with performance measures  
6 that might have effected, for instance, CLECs where  
7 the CLEC was overbilled for services?

8 A I would just clarify your question. The  
9 performance measures don't effect CLECs. You mean  
10 there's a performance that was reported that could  
11 have had a negative impact?

12 Q Right.

13 A Okay. I know there was a lot of discussion  
14 about, specifically in the 271 proceeding, about  
15 billing performance. And to some degree, I think  
16 some of that was -- some of those issues would have  
17 been reflected in performance results.

18 Q I can give you an example. With Forte, for  
19 instance, there was quite an issue with that. I'm  
20 just telling you. I don't know if you know.

21 But to the extent that there was a  
22 dispute over significant amounts of money, do you

1 realize that that was ultimately resolved, that SBC  
2 settled those issues? Do you have any knowledge?

3 A I have no doubt that SBC solves billing  
4 disputes on a regular basis with business-to-business  
5 with CLECs.

6 Q Okay. Do you know what a jeopardize notice  
7 is, a jep notice?

8 A Yes, I do.

9 Q And when does that occur? When is it used?

10 A A jeopardy notice is sent to CLECs and the  
11 most common type of jeopardy, particularly from a  
12 performance measurement perspective, is when we need  
13 to notify the CLEC that there's a chance that the due  
14 date that we've sent back to them on a firm order  
15 confirmation, the FOC you mentioned earlier, is not  
16 going to be able to met. So that the CLEC has the  
17 opportunity to work with their end customers to --  
18 and with AT&T to make sure we can deal that most  
19 effectively.

20 Q And, in fact, in the best of circumstances,  
21 it's supposed to work as an electronic jep notice;  
22 correct?

1           A     My understanding is they're sent both in  
2     electronic format, if that's the way we regularly  
3     interact with the CLEC, but should the electronic  
4     format not be able to be used for some reason, that  
5     there are manual processes, faxes, et cetera, that  
6     can be used.

7           Q     Do you know that in the 2003 time frame  
8     spilling over from 2002, that there was a rather  
9     large issue of jep notices not getting to the  
10    destination, that they were piling up somewhere?

11          A     I'm not aware of that issue, no.

12          Q     Do you know what a change request is?

13          A     I believe you're referring like an OSS  
14    change request that a CLEC would submit through the  
15    change of management process. Yes, I'm aware of  
16    those.

17          Q     And what is your understanding?

18          A     My understanding is that it's a request  
19    from a CLEC or a group of CLECs seeking some kind of  
20    a change to AT&T's manual or system processes.

21          Q     And that might occur as a result either  
22    CLEC, AT&T discussions or as part of the CLEC user

1 forum?

2 A Yes. Basically, my understanding is,  
3 either AT&T could bring a suggested change into that  
4 process or CLECs can bring it into that process.  
5 Again, either, as you say, one on one or -- at least  
6 they -- you know, one party still has to bring it  
7 into the process and that's through a formal change  
8 management, regular meeting conference call process.

9 Q Okay. Do you know what a defect report is?

10 A A defect report generally to me is an  
11 identification that there is a defect, some kind of a  
12 problem, in a system where it's not meeting the  
13 requirements that have been defined.

14 Q Okay. And is it your understanding that  
15 when a defect report is issued, that it's, in fact,  
16 SBC fixing the problem on its side?

17 A I don't know definitively if SBC -- every  
18 defect report is recognized to be a defect. If SBC  
19 issues a defect report, I think it typically is  
20 acknowledgment that there is a -- some kind of a  
21 problem that needs to be addressed.

22 Q Okay. Are you familiar with problems with

1 worker in the way? Do you know that term?

2 A I've heard the term. I'm not very familiar  
3 with the details. I've not been involved in any of  
4 the operational issues, nor any of the discussions  
5 with CLECs on those issues.

6 ADMINISTRATIVE LAW JUDGE SAINSOT: What's the  
7 name of that term again?

8 MR. ROWLAND: Worker in the way.

9 ADMINISTRATIVE LAW JUDGE SAINSOT: Okay.

10 BY MR. ROWLAND:

11 Q There's another one, maybe not exactly  
12 related, but do you know the term provide tone on  
13 line?

14 A As a layman, not as a telephone engineer.

15 Q Okay. That's fine.

16 MR. ROWLAND: One second.

17 BY MR. ROWLAND:

18 Q With respect to some of the earlier  
19 discussion -- I don't want to cover the whole line of  
20 questioning; but with respect to some of the  
21 discussion about Tier 1 or Tier 2, Tier 1 is usually  
22 referred to for liquidated damages; correct?



1           A     Tier 1 is payments that we make either  
2     results that we report, payments that we make to  
3     individual CLECs.

4           Q     Okay. But for liquidated damages?

5           A     Well, again, the term liquidated damages, I  
6     think, is not in the remedy plan. It's payments. I  
7     think we've always felt that they're liquidated  
8     damages, but the remedy plan doesn't call them that.

9           Q     We've been over this?

10          A     Okay.

11          Q     We won't repeat that.

12                     Tier 2 is basically a penalty  
13     assessment?

14          A     I believe that term may be in the remedy  
15     plan. It's an assessment, is a term that we  
16     typically use, and that's payments that were made to  
17     the state based on aggregate performance to all  
18     CLECs.

19           MR. ROWLAND: Okay. Thank you, Mr. Ehr.  
20     That's all the questions that I have.

21           THE WITNESS: Thank you.

22

1 ADMINISTRATIVE LAW JUDGE SAINSOT: Anybody  
2 else?

3 I just have a few questions.

4 EXAMINATION

5 BY

6 ADMINISTRATIVE LAW JUDGE SAINSOT:

7 Q Mr. Ehr, am I correct that if the 01-0120  
8 plan is not extended for these, the three month  
9 period in question, that CLECs won't receive any  
10 compensation for SBC performance failures?

11 A CLECs have already received compensation  
12 for the performance failures at that time.

13 Q Oh, that's -- but -- you're correct. I  
14 phrased that question poorly.

15 But then SBC would pursue whatever  
16 remedies it had to recoupe with those monies?

17 A That would be my understanding, yes.

18 And just -- that would be for the CLECs  
19 at that time who had chosen to participate in the  
20 0120 plan. Other CLECs who were under other plans  
21 would not -- obviously, they would still have their  
22 remedies. We wouldn't be seeking repayment from

1 anybody else.

2 Q On Page 4 of your direct testimony you said  
3 that in the fall of '02, SBC was meeting or exceeding  
4 approximately 90 percent of the performance standards  
5 that were subject to  
6 remedies.

7 And you're talking -- when you use the  
8 word "remedy," you're talking about making payments;  
9 is that correct?

10 A Yes. The measures that we would have to  
11 make payments on either to CLECs or to the state.

12 Q Do you know what SBC's performance was for  
13 standards that weren't subject to remedies?

14 A I don't know. I would assume it was in the  
15 same range, you know, high 80s to 90 percent range.

16 Q And do you know how many standards don't  
17 have remedies?

18 A In general, at that point in time, I think  
19 we had about, you know, a half to two-thirds of the  
20 measures were subject to remedy, probably more -- 60  
21 percent, I think, is my recollection. And then there  
22 were -- the remainder were not subject to remedy.

1 I think it's safe to say it's over half.

2 Q I gather from your testimony that you're of  
3 the opinion that 90 percent performance is good; is  
4 that correct?

5 A Yes. Because of the complexity of  
6 reporting and the variants that we can see month to  
7 month 90 percent and addition some of the statistical  
8 issues with the way the measurement is done, yes, 90  
9 percent is good performance.

10 Q And on Page 5 of your direct testimony, you  
11 said that SBC had other remedy plans in place in the  
12 fall of 2002. Any of those -- did those remedy plans  
13 have the K-table?

14 A One of -- they both have a table for  
15 determining the critical value that you compare to.  
16 One of the plans, the plan that had continued from  
17 the merger agreement, did still have the K-table in  
18 that the function of making sure that we didn't pay  
19 for misses that would be expected to be false --  
20 what's called false failures. That's the purpose of  
21 the K-table. That was still in effect in that plan,  
22 yes.

1 Q So you're saying you had two plans?

2 A Yes. For CLECs who were on that plan and  
3 didn't take the actions to go to the 0120 plan, we  
4 made the decision that we would continue to pay those  
5 CLECs on that plan as opposed to not pay them  
6 anything.

7 Q And this is the Texas remedy plan?

8 A Yes.

9 Q And that's the one with the K-table?

10 A Yes, it is.

11 Q And then other one that you talked about?

12 A The other one, a much smaller number of  
13 CLECs, it's basically the plan that was put into  
14 effect as part of the FCC merger approval, we had  
15 another plan that CLECs could take advantage of  
16 called a 13 State, at the time. It's now the 11  
17 State. And it basically has a different set of PMs,  
18 a different remedy construct.

19 And the advantage for CLECs if they want  
20 the same plan across all 13 states for SBC at the  
21 time, they could have that plan and have the same  
22 plan everywhere.

1           Q     I'm just curious now, it had kind of a  
2     modified K-table, is that what you're saying?

3           A     Well, the K-table as it existed in the  
4     Texas plan serves two purposes. One was to define  
5     based on the number of transactions or tests that we  
6     performed for an individual CLEC, what the critical  
7     value, statistical value, is to determine parity for  
8     parity measures.

9                     The other function of the table was,  
10    based on that number of tests, what would be the  
11    expected number of false failures based on the 95  
12    percent confidence in the parity test.

13                    So the table physically in the document  
14    served two purposes. There's two columns. One was  
15    the Critical Z, the other was the -- or, actually,  
16    three columns. The number of tests, the number of  
17    exclusions, and the actual Critical Z.

18                    So that was how -- what the purpose of  
19    the table is, for statistical issues.

20           Q     So -- but I'm not sure I understand.  
21    You're saying that the second -- the 13 State --

22           A     Yes.

1           Q     That that had the K-table?

2           A     It had the table.  It's generally referred  
3     to as the K-table because of the K value is part of  
4     the table.  That table existed there, again, for the  
5     purpose of determining that critical statistical  
6     value for parity tests.  It did not have the same  
7     exclusion function that was in the Texas plan.

8           Q     Oh, okay.  Got it.

9                     And your testimony talked a little bit  
10    about SBC's 271 Procedure in Illinois.  And I just  
11    want to clarify.  Section 271 concerns federal law;  
12    right?

13          A     My generic understanding, not being a  
14    lawyer, is that Section 271 is part of the Telecom  
15    Act, and it's related to the things that need to be  
16    done for us to be able to sell long-distance in our  
17    local service areas.

18          Q     Okay.  You just answered my second  
19    question.

20                 ADMINISTRATIVE LAW JUDGE SAINSOT:  Thanks.  I  
21    have no further questions.

22                 THE WITNESS:  Okay.

1           MR. METROPOULOS: Your Honor, I just have a  
2 brief redirect, if I may.

3                       REDIRECT EXAMINATION

4                       BY

5                       MR. METROPOULOS:

6           Q       Just a few questions, Mr. Ehr.

7                       First, recalling your discussion with  
8 Mr. MacBride, do you recall talking about the terms  
9 of an agreement between SBC and TDS that had what you  
10 call a fall-back provision?

11           A       Yes.

12           Q       In 2002, what was SBC's position as to  
13 whether any other CLEC could get the same fall-back  
14 provision?

15           A       It would have been that we would offer  
16 those same terms to any other CLEC who chose that  
17 plan.

18           Q       Do you also recall talking with Mr.  
19 MacBride about the distinction between aggregate  
20 results for all CLECs and individual results for one  
21 CLEC?

22           A       Yes.



1           Q     As director of performance measures, what  
2     levels of performance do you report to individual  
3     CLECs?

4           A     Well, we report the levels that the  
5     performance results generate, if I understand your  
6     question.

7           Q     Okay. Well, do you report both at the  
8     aggregate and the individual levels or one or the  
9     other or --

10          A     For individual CLECs, we report their  
11     individual results -- they also have the ability to  
12     see the aggregate result for all CLECs, but we  
13     only -- for an individual CLEC, we generate results  
14     for their performance measurements based on their  
15     individual activity.

16          Q     And in your experience, what correlation is  
17     there between individual CLEC results and aggregate  
18     CLEC results?

19          A     Typically, the correlation is pretty tight.  
20     In other words, we don't see, you know, 90 percent  
21     performance overall for the industry and CLECs at 60  
22     percent of measures met or at 100 percent of measures

1 met.

2 Typically, if it's a 90 percent, we're  
3 clustered within, I mean, generally, plus or minus 3,  
4 4, 5 percent, typically.

5 Q Okay. To the extent any CLECs in this  
6 proceeding raised any issues with respect to their  
7 individual performance, did you address those  
8 concerns in your rebuttal testimony?

9 A I believe I did so.

10 Q Do you recall talking with Mr. Rowland  
11 about the business rule for a Performance Measure 12,  
12 provision accuracy?

13 A Yes.

14 Q And can you tell us -- do you recall also  
15 talking to him about whether there might be some  
16 alternative way of measuring provisioning accuracy?

17 A Yes.

18 Q In October 2002, was there already another  
19 way to measure provisioning accuracy?

20 A Yes, there was.

21 MR. ROWLAND: I'm going to object at this  
22 point.

1 I asked him this question-related area at the time  
2 and he didn't know. Now, after consultation with  
3 counsel, he seems to have an answer. I think it's  
4 kind of unusual.

5 MR. METROPOULOS: Your Honor, his question was  
6 couched as to, hypothetically, if an alternative  
7 measure could be developed in the future, would it be  
8 applied retroactively?

9 MR. ROWLAND: That was one question.

10 MR. METROPOULOS: I'm asking about whether --

11 MR. ROWLAND: That was one question, Jim. The  
12 other question was, Is there a replacement? And he  
13 said he didn't know.

14 MR. METROPOULOS: Your Honor, again --

15 ADMINISTRATIVE LAW JUDGE SAINSOT: What was  
16 your question again, Mr. Metropoulos?

17 MR. METROPOULOS: Whether there was also --  
18 whether there was another measure that also addressed  
19 the provision accuracy.

20 I'm not saying that there was a  
21 replacement. I'm just saying that there was another  
22 measure that addressed issue.

1           MR. ROWLAND: Well, that goes beyond the area  
2 of cross, anyway.

3           MR. METROPOULOS: Again, I believe if he's  
4 trying to limit his area of cross and not let this  
5 Commission see what other relevant data there are, I  
6 certainly disagree with his objection.

7           ADMINISTRATIVE LAW JUDGE SAINSOT: I really  
8 think Mr. Rowland has a point here. It was -- what  
9 you're referring to right now, Mr. Metropoulos, is  
10 the substance of what Mr. Rowland said. It may not  
11 be the exact wording, but it pretty much means the  
12 same thing.

13                       So the objection is sustained.

14           MR. ROWLAND: Thank you, your Honor.

15           MR. METROPOULOS: Okay. I have no further  
16 questions, your Honor.

17           ADMINISTRATIVE LAW JUDGE SAINSOT: Okay.  
18 Nobody?

19                       Mr. Ehr, you're free to go.

20           MR. ROWLAND: I have one more witness.

21

22

1 (Witness sworn.)

2 WILLIAM DVORAK,

3 having been called as a witness herein, after having  
4 been first duly sworn, was examined and testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY

8 MR. ROWLAND:

9 Q Could you please state your name and your  
10 business address.

11 A My name is Bill Dvorak and I work with  
12 Cimco Communications, located at 1901 South Meyers  
13 Road, Suite 700, in Oak Brook Terrace, Illinois.

14 Q Mr. Dvorak, what is your title?

15 A Chief financial officer.

16 Q And have you prepared or had prepared under  
17 your direct testimony in this case?

18 A I have.

19 Q And it consists of several pages of  
20 question and answers. If I asked you those questions  
21 again today, would your answers be the same?

22 A They would.

1           Q     I show you what's been marked as -- excuse  
2     me, and that exhibit for the record is Cimco 2.0.

3                     I show you what's been marked as Cimco  
4     Exhibit 2.0, reply testimony of William Dvorak on  
5     behalf of Cimco Communications.

6                     Was this prepared by you or under your  
7     direction?

8           A     Yes, it was.

9           Q     And included with it were two attachments,  
10    the first of which was Schedule 1, the document Cimco  
11    Communications State of Illinois, and it's a summary  
12    of amounts paid in October of '02 through December of  
13    '02; is that correct?

14          A     That's correct.

15                    ADMINISTRATIVE LAW JUDGE SAINSOT:   You need to  
16    speak up, counsel.

17    BY MR. ROWLAND:

18          Q     In addition, attached to your testimony,  
19    Schedule 2 is a letter and documents to the FCC by  
20    Cimco.  It's actually 14 pages long; is that correct?

21          A     That's correct.

22          Q     And if I asked you the questions, your

1     answers to the replied testimony today would be the  
2     same?

3             A     They would be.

4             Q     Okay.  In addition to providing Cimco  
5     Exhibit 2.0, there is confidential data including in  
6     Schedule 1.  That's a confidential document; correct?

7             A     Correct.

8             MR. ROWLAND:  I tender the witness for  
9     cross-examination.

10                   I move for the entry of Cimco  
11     Exhibit 1.0 and Cimco 2.0 into evidence.

12             ADMINISTRATIVE LAW JUDGE SAINSOT:  Any  
13     objection?

14             MR. METROPOULOS:  No, your Honor.

15             ADMINISTRATIVE LAW JUDGE SAINSOT:  That being  
16     the case, your motion is granted.  Cimco Exhibit 1.0  
17     and Cimco Exhibit 2.0, which the are the direct and  
18     cross- -- or, excuse me, direct and reply testimony  
19     of Mr. Dvorak are admitted into evidence.

20                   (Whereupon, Cimco  
21                   Exhibit Nos. 1.0 and 2.0 were  
22                   admitted into evidence.)

1 ADMINISTRATIVE LAW JUDGE SAINSOT: And you will  
2 give me copies?

3 MR. ROWLAND: Yes. I will make sure you have  
4 copies. For instance, you do you not have the direct  
5 testimony? I gave you the reply testimony.

6 ADMINISTRATIVE LAW JUDGE SAINSOT: Right.  
7 Well, we'll take care of it at the end of the day.

8 (Whereupon, a discussion  
9 was had off the record.)

10 MR. ROWLAND: I tender Mr. Dvorak for  
11 cross-examination.

12 MR. METROPOULOS: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY

15 MR. METROPOULOS:

16 Q Good afternoon, Mr. Dvorak. How are you  
17 doing?

18 A Fine.

19 Q You've been patiently waiting, and now  
20 you'll be rewarded, hopefully, with only a few  
21 questions.

22 A That would be nice.



1           Q     My name is Jim Metropoulos an attorney  
2     representing AT&T Illinois, which was formerly known  
3     as SBC-Illinois.  It's identified as such in your  
4     testimony.

5                     I'd like to turn to your rebuttal  
6     testimony, and I will direct you to Line 41.

7           A     Okay.

8           Q     And at Line --

9           A     Wait.

10          Q     This is the rebuttal.

11                    And at Line 41, you were asked whether  
12     there were performance measures missed that, as you  
13     put it, significantly impacted Cimco's ability to  
14     provide service.  Do you see that?

15          A     I do.

16          Q     Okay.  And in response, you attach a  
17     confidential Schedule 1 that, in your words, details  
18     the remedy payments made by SBC to Cimco for the  
19     October 2002 through December 2002 time frame?

20          A     Yes.

21          Q     And am I correct that Schedule 1 comprises  
22     every single remedy payment made by SBC for that

1 period in 2002?

2 A Correct.

3 Q You did not exclude any payments for any  
4 reason; correct?

5 A No.

6 Q And you're Schedule 1 shows only  
7 performance measures that SBC missed; correct?

8 A Correct.

9 Q Suffice it to say, these were not the only  
10 performance measures that SBC reported for your  
11 company during that time period; correct?

12 A Can you ask the question again.

13 Q Yes.

14 Suffice it to say, the performance  
15 measures you list on Schedule 1 were not the only  
16 performance measures that SBC reported for your  
17 company during that time period?

18 MR. ROWLAND: And, Jim, I just want to clarify  
19 the question. Are you pointing to something in  
20 particular? Is there something directly within --

21 MR. METROPOULOS: Actually, I'm simply trying  
22 to confirm what is not on the Schedule 1, or.

1       Whether --

2               BY MR. METROPOULOS:

3               Q     There are additional performance measures  
4     for which results were reported that do not appear on  
5     Schedule 1?

6               A     I'm not sure if there are or not.

7               Q     It's certainly possible, in your mind, that  
8     SBC may have passed at least some of the performance  
9     measures it reported for Cimco during that period?

10              A     It's possible.

11              Q     And to the extent SBC did pass, you did not  
12     show us any of those performance measures that SBC  
13     passed; correct?

14              A     That's correct.

15              Q     That was not part of your testimony. You  
16     didn't undertake to show us the passes?

17              A     That's right.

18              Q     And for the performance measures that were  
19     missed, your exhibit does not provide the performance  
20     results on which the payments that you list were  
21     based; correct?

22                       In other words, you provided the remedy

1 payment amount.

2 A Yes, that's correct.

3 Q You did not provide the actual performance  
4 results that, you know, on which the payments  
5 were --

6 A That's correct.

7 We would have to get that information  
8 from you.

9 Q And you do receive performance results on a  
10 regular basis from SBC; do you not?

11 A The remedy dollars or the calculations?

12 Q The calculations.

13 A They are posted on the Web site. We have  
14 to go in and find them.

15 Q Okay. They are available to you?

16 A They are available.

17 Q Okay. You also attached a Schedule 2 to  
18 your testimony, a letter from your attorney, Mr.  
19 Rowland, who's here with us, to the FCC; correct?

20 A Correct.

21 Q And am I correct that Schedule 2, the  
22 letter, was submitted to the FCC in connection with

1     its review of SBC's application to provide  
2     long-distance service in Illinois; correct?

3             A     That's correct.

4             Q     And did Cimco participate in those SBC --  
5     in those FCC proceedings?

6             A     We did.

7             Q     And did Cimco also participate in the  
8     proceedings here at this Commission where the  
9     Commission was investigating SBC's application?

10            A     We did.

11            Q     And were the same issues that you noted in  
12     Schedule 2 raised in the Illinois Commission's  
13     proceeding?

14            A     I believe -- yes.

15            Q     And in your testimony, you don't say what  
16     the Illinois Commission thought about the allegations  
17     in your letter; correct?

18            A     Correct.

19            Q     And you don't say what the FCC decided with  
20     respect to those allegations; correct?

21            A     Correct.

22            Q     We could go to the various orders by the

1 Commission or the FCC and find that out?

2 A Correct.

3 Q Suffice it to say, the Commission's order  
4 and the FCC's order are both in the public record;  
5 right? We can all find it?

6 A Sure.

7 Q It's also fair to say that this Commission  
8 recommended approval of SBC's application to provide  
9 long-distance service?

10 A That's correct.

11 Q And it is also true that the FCC granted  
12 SBC's application; correct?

13 A That's correct.

14 MR. METROPOULOS: I have no further questions.

15 ADMINISTRATIVE LAW JUDGE SAINSOT: Anybody  
16 else?

17 I have a few questions.

18 EXAMINATION

19 BY

20 ADMINISTRATIVE LAW JUDGE SAINSOT:

21 Q In your reply testimony, Mr. Dvorak, you  
22 talk about there being a history of SBC failing to

1     execute Cimco orders.   What time period are you  
2     looking at?

3           A     Forever.   I mean, it's been an ongoing  
4     problem of not getting orders processed on a timely  
5     basis.   There's ebbs and flows to that.   The  
6     particular owners for us after a -- it's called a  
7     ELSOT (phonetic) release schedule.   Periodically SBC  
8     requires that the EDI be upgraded.   And during that  
9     time period those were disastrous.   And we would have  
10    terrible time for months after that getting the  
11    issues resolved.   Then it will get better as we  
12    resolved issues and then we'd have another upgrade.

13           Q     Thank you.

14           A     Even when there weren't any ELSOT or EDI  
15    upgrades situations there would be ongoing  
16    problems.

17           Q     And you also generally say that Cimco lost  
18    customers due SBC's ineffectiveness?

19           A     Yes.

20           Q     How do you know that?

21           A     Well, the customers tell us.   But let me --  
22    can I walk you through a typical scenario example?

1 Q Sure.

2 A Or is that not --

3 Q Sure. Why not.

4 A Okay. What happens is a number of these  
5 things, like, we don't get a timely FOC date or we  
6 have a problem with the accuracy of billing. The  
7 customer perceives that problem to be a Cimco  
8 problem. In other words, we didn't have that problem  
9 with SBC, but now have it with Cimco.

10 Often, the underlying problem is because  
11 of some -- an interface between SBC and Cimco. And  
12 in our opinion, often it's because of system failures  
13 or things we're talking about that would pay for  
14 under the remedy.

15 Customers still looks at it like it was  
16 our problem; and if we're going to have those problem  
17 with Cimco, we're going back to SBC.

18 Q On Page 7 of Mr. Ehr's rebuttal testimony,  
19 he says that PM 35 is better than PM 12 measure  
20 provisioning accuracy. Do you agree?

21 A No, I don't agree. I'm not overly familiar  
22 with 35, but I don't know why it would be any better



1     than -- in my opinion, it's no better.

2             Q     Normally, when you have a -- many times in  
3     life, when someone has a --

4             A     Excuse me, your Honor, can I add another  
5     comment to that?

6             Q     Sure.

7             A     Is that also it's -- in our opinion, when  
8     we hear things like this, it would have been better.  
9     As a matter of fact, it wasn't there at the time. I  
10    mean, this -- you know, we are not a -- you know,  
11    this huge conglomerate. We're trying to deal with  
12    the rules that we were given. In this case, the  
13    remedy plan.

14                    So now to say, this was better, that was  
15    better. The fact of the matter is, it's very hard  
16    for to us deal with that. There are times when it's  
17    the right thing to do. We didn't argue with  
18    something we disagree with. We didn't argue that  
19    they were wrong. We wanted to accept what was there.

20             Q     Well, a lot of times when people have  
21    billing errors, they raise it to the billing company.  
22    Did Cimco raise it on an informal basis with billing

1 company?

2 A We're constantly filing disputes with SBC,  
3 and that's always the subject of conversation; but it  
4 never seems to get a lot better. And certainly  
5 addressed it in the 271.

6 ADMINISTRATIVE LAW JUDGE SAINSOT: Bear with me  
7 for a second.

8 THE WITNESS: Sure.

9 ADMINISTRATIVE LAW JUDGE SAINSOT: Actually, I  
10 have no further questions.

11 MR. ROWLAND: We have no redirect.

12 ADMINISTRATIVE LAW JUDGE SAINSOT: Okay. You  
13 can step down. Thank you.

14 I still need a copy of his direct and  
15 rebuttal for the e-docket.

16 MR. ROWLAND: Absolutely.

17 ADMINISTRATIVE LAW JUDGE SAINSOT: Okay. Then  
18 we can just reconvene at 11:00 on Thursday; right?

19 Off the record.

20

21

22

1                   (Whereupon, further proceedings  
2                   in the above-entitled matter  
3                   were continued to February 23,  
4                   2006, at 9:30 a.m.)

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